

Chapter 7: Employee Relations, Separations, & Grievance Procedure

***Administrative/HR Manual for Virginia Local Departments of Social Services
(LDSS)***

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PART I: EXPECTED WORKPLACE CONDUCT

POLICY STATEMENT

This policy establishes standards of conduct and minimum expectations for work performance and workplace behavior. Accordingly, this policy sets forth (1) standards for employee conduct; (2) disciplinary offenses; and (3) corrective actions that may be imposed. [§§ 63.2-217](#) and [63.2-219](#) of the Code of Virginia, and [§§ 22VAC40-675-30](#), [22VAC 40-675-180](#), [22VAC40-675-190](#), [22VAC40-675-210](#), and [22VAC40-675-220](#) of the Administrative Code of Virginia serve as the basis for Part I of this policy. Associated sections from the Code of Virginia will be referenced in the policy area to which they apply.

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS. Portions of this policy apply to contractors, clients, and third parties who enter the LDSS workplace.

Additional Information:

Per [§ 22VAC40-675-50](#) of the Administrative Code of Virginia, in local jurisdictions where there is a standards of conduct and/or political activity policy that applies uniformly to all local government employees, the local department of social services may deviate to either one or both of the locality policies, provided the deviation is approved by [VDSS HR Policy Team](#) (hr.employeerelations@dss.virginia.gov) as being in substantial conformity with this policy.

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SECTION I: STANDARDS OF CONDUCT

The following standards are not all-inclusive but are intended to illustrate the minimum expectations for acceptable work performance and workplace behavior. **Any offense that undermines the operational effectiveness the LDSS may be considered unacceptable and will be treated in a manner consistent with the provisions of Chapter 7.** If you have questions about expected conduct in the workplace, contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov).

ATTENDANCE

Employees are required to:

1. Report to work as scheduled.
2. Plan absences in advance with supervisors, and report unexpected absences promptly.
3. Report arriving late to work or leaving work early.
4. Perform assigned duties during work hours, adhere to scheduled break and lunch schedules, and avoid personal matters during work hours.
5. Work overtime, including weekends, holidays, evenings, and emergency duty when directed. Non-exempt employees (as defined by the Fair Labor Standards Act) should not work overtime unless expressly directed by the supervisor or local director.

SATISFACTORY WORK PERFORMANCE

Employees are expected to consistently meet established performance measures and abide by all LDSS policies and directives. See **Chapter 6** of the [LDSS Administrative/HR Manual](#) for more information on setting performance expectations.

REPORT CIRCUMSTANCES THAT MAY AFFECT SATISFACTORY WORK PERFORMANCE

1. Supervisors are responsible for setting performance expectations, recording them on the [LDSS Employee Performance Plan and Evaluation \(EPPE\)](#), presenting this document to their employees, and explaining its contents.
2. Employees are responsible for understanding the performance expectations outlined in their EPPE, reporting any conditions that prevent satisfactory work performance to their supervisor, and seeking guidance or clarification on instructions and information provided.

Employees are required to report the following circumstances:

- a. Convictions of a moving vehicle offense (if using the LDSS vehicle or transports clients).
- b. Criminal charges.

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- c. Criminal convictions.
- d. Child or Adult Protective Services complaints.
- e. Hatch Act violations - The Hatch Act limits certain political activities of federal employees and some state, D.C., and local government employees who work with federally funded programs. Political activity conduct will be discussed in [Subsection G., "Political Activity."](#)

WORKPLACE CIVILITY

GENERAL PROVISIONS & APPLICATION

LDSSs must provide a welcoming, safe, and civil workplace for their employees, interns, volunteers, contract workers, clients, and other third parties. Agencies must also increase awareness of employees' responsibility to foster mutual respect and a healthy work environment. Workplace bullying, harassment, violence, and retaliation are strictly prohibited.

Workplace civility policies apply to all LDSS employees, interns, and volunteers. Expectations for appropriate behavior extend to contract workers, clients, and other third parties. The LDSS local director, managers, or supervisors must address complaints made in good faith and not tolerate prohibited conduct. Any LDSS employee who violates civility policies is subject to disciplinary action, up to and including termination.

PROHIBITED CONDUCT

Bullying

Bullying refers to repeated, unreasonable actions intended to intimidate, degrade, or humiliate a person or group. A confirmed complaint will result in disciplinary action, up to and including termination.

Types of bullying include:

1. **Physical:** Aggressive or intimidating physical behavior (crowding, hovering, pushing, hitting, etc.).
2. **Verbal:** Aggressive or intimidating verbal communication (yelling, name-calling, etc.).
3. **Social:** Attempts to ostracize, ridicule, or humiliate within a social group (ignoring, spreading gossip, etc.).
4. **Cyberbullying:** The use of social/electronic platforms to embarrass, threaten, or intimidate.

Unlike harassment, bullying itself is not typically illegal under federal employment laws unless it overlaps with characteristics protected under anti-discrimination laws or if it escalates to the level of harassment or violence. See "Helpful Hints: Harassment or Bullying?" [Link] for more information on this topic.

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Harassment

Harassment is unwelcome conduct based on a protected characteristic (such as race, sex, religion, disability, etc.) that creates a hostile or offensive work environment or results in adverse employment actions. This is typically prohibited under federal, state, and local laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA). Harassment is not tolerated, and a confirmed complaint will result in disciplinary action, up to and including termination.

Harassment may include, but is not limited to:

1. Verbal abuse.
2. Using epithets or vulgar/derogatory language.
3. Displaying of offensive cartoons or materials.
4. Mimicry.
5. Using lewd or offensive gestures.
6. Telling offensive jokes.
7. All forms of sexual harassment (quid pro quo, hostile work environment).

For details on the internal and external complaint processes, refer to **Chapter 1** of the [LDSS Administrative/HR Manual](#).

**Helpful Hints: Harassment or Bullying?**

The behaviors described in both bullying and harassment are similar, and the terms are often used interchangeably. The difference between the two terms is a matter of law.

- ◆ **Harassment** in the workplace refers to a form of employment discrimination prohibited under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), and the Americans with Disabilities Act of 1990 (ADA). An employee found guilty of harassment violates both agency policy and federal law.
- ◆ **Bullying**, on the other hand, is not illegal per se, but a substantiated complaint violates agency policy. It's important to note that certain behaviors associated with bullying may be punishable under Virginia law, such as threats, assault, or extortion.

Can bullying cross over into harassment?

Yes, it can. It is strongly recommended that the LDSS consult the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney for guidance on handling complaints of bullying or harassment in the workplace.

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Possession of Weapons

The LDSS adheres to local ordinances regarding the possession of weapons on county/city property. For any questions concerning the *legal* possession of weapons by employees or the public on LDSS property, please contact the local authorities.

Workplace Violence

Workplace violence is strictly prohibited. Employees who violate this policy are subject to disciplinary action, up to and including termination. Actions that may constitute workplace violence include, but are not limited to:

1. Threatening or committing an act of vandalism or destruction to LDSS property.
2. Engaging in behavior that causes a reasonable fear of physical or psychological harm to another person.
3. Uncontrolled anger that results in physical actions (e.g., slamming doors, punching or kicking walls or tables, throwing objects, etc.).
4. Threatening or committing assault, whether physical or sexual.
5. Brandishing or using a weapon on LDSS property or during LDSS business without legal cause or authority.

Retaliation

Retaliation is any overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an employee who brings forth a workplace civility violation complaint in good faith. Employees or third parties who believe their workplace civility rights have been violated have the right to file their complaint(s) without fear of retaliation. Any form of retaliation against an employee or third party who, in good faith, reports these prohibited behaviors or participates in an investigation, will not be tolerated. Employees found to have committed an act of retaliation are subject to disciplinary action, up to and including termination.

SEARCH OF PREMISES

The LDSS reserves the right to search its premises for illegal weapons or other contraband in response to valid perceived or actual threats of workplace violence. Any manager or supervisor requesting a search must have a reasonable basis for the request and must obtain approval from the local director.

Prior to conducting any search, the LDSS must contact the [VDSS HR Employee Relations Team \(hr.employeerelations@dss.virginia.gov\)](mailto:hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney prior to conducting any search. The local director will deny the request if there is no reasonable basis for the search. If approved, the search will respect employees' reasonable expectation of privacy and will be limited to areas relevant to the request.

The local board has the authority to approve or deny search requests initiated by the local director. If the locality has appointed an advisory board and the local director acts as the administrative entity (acting as the local board), the Locality Board of Supervisors/City Council or their designee will have the authority to approve or deny requests.

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Employees found in possession of illegal weapons or other contraband, or who refuse to cooperate during a search, are subject to disciplinary action, up to and including termination.

WORKPLACE CIVILITY RESPONSIBILITIES

Local Director

The local director is required to:

1. Follow all workplace civility policies.
2. Express strong disapproval of all forms of prohibited conduct.
3. Periodically communicate workplace civility policies to employees and third parties.
4. Support supervisors in stopping prohibited conduct and preventing retaliation.
5. Support employees who file good faith complaints.
6. Work with agency supervisors, the VDSS Regional Director, and the local board to establish safety protocols to address violent behavior.

Supervisor

Supervisors are required to:

1. Follow all workplace civility policies.
2. Express strong disapproval of all forms of prohibited conduct and intervene when they observe it.
3. Stop any prohibited conduct of which they are aware, even without a formal complaint.
4. Take immediate action to address any threats or violent behavior that could endanger the safety or cause damage.
5. Take immediate action to eliminate any hostile work environment following a harassment complaint.
6. Take immediate action to prevent retaliation against employees making a good faith complaints or any participating in investigations.

Employee

Employees are required to:

1. Follow all workplace civility policies; and
2. Immediately report any threats, retaliation, violent behavior, or other violations of this policy.

CRIMES INVOLVING ACTS OF VIOLENCE OR WEAPONS

The LDSS prohibits all employees, contractors (including contract employees and subcontractors), clients, and third parties from committing acts of violence or illegally possessing weapons on LDSS property or while conducting agency business. Law enforcement may be notified if criminal activity is suspected.

CRIMES OCCURRING OUTSIDE OF WORK HOURS

An employees' off-duty behavior related to acts of violence may adversely impact the agency or its clients. Therefore, the LDSS reserves the right to take appropriate disciplinary action for acts of violence or weapons violations occurring off agency premises.

Employees charged with, convicted of, pleading guilty to, or sentenced for a crime of violence, including domestic violence, or weapons violations must report the conviction, plea, or sentence to their direct supervisor within five (5) days. An appeal of a conviction does not negate this reporting requirement.

Failure to comply will result in disciplinary action, up to and including termination of employment. For recommendations or questions regarding criminal violations, contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney.

CONFIDENTIALITY

All information, documentation, and evidence related to investigations of valid complaints under the workplace civility policy are highly sensitive. The LDSS shall maintain strict confidentiality regarding investigations and any resulting information or documentation.

All documentation generated during investigations of workplace civility policy violations should be stored or destroyed in accordance with **Chapter 8** of the [LDSS Administrative/HR Manual](#). Any employee who knowingly discloses confidential information will be subject to disciplinary action, up to and including termination.

ALCOHOL & DRUGS

GENERAL PROVISIONS & APPLICATION

The LDSS is committed to eliminating the presence, use, and misuse of drugs and alcohol in the workplace¹. The term “prohibited substances” in this section refers to alcohol², illegal drugs³, or legal drugs (i.e., over-the-counter (OTC) or prescription medication) used illegally, including possession for personal use, distribution, or for the production or manufacture of illegal drugs.

Policies concerning alcohol and drugs apply to all LDSS employees, interns, and volunteers. Any LDSS employee who violates any part of this policy section is subject to disciplinary action, up to and including termination of employment. However, the LDSS supports employees who voluntarily seek help for alcohol or drug addiction before facing discipline or termination. The severity of disciplinary actions for policy

¹ [41 U.S.C. Ch. 81](#)

² “Alcohol” includes any product defined as such in the Alcohol Beverage Control Act, [§ 4.1-100](#) of the Code of Virginia, as amended.

³ “Illegal Drug” includes any substance defined as such in the Drug Control Act, [Chapter 34, Title 54.1 of the Code of Virginia](#), as amended, and/or schedules I through V of section 202 of the Controlled Substances Act ([21 U.S.C. 812](#)) of the US Code, and whose manufacture, distribution, dispensation, use, or possession is controlled by law.

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violations will be assessed on a case-by-case basis, with mitigating factors taken into consideration. Refer to "[Mitigating and Aggravating Factors](#)" for more details.

Application to Non-Employees

1. Applicants for employment will be disqualified if found possessing or under the influence of prohibited substances during the recruitment and selection process.
2. Contract workers must not possess or be under the influence of prohibited substances on LDSS property or while performing agency work. Violations will be reported to the contracting company.
3. Clients and other third parties at LDSS premises must refrain from possessing or being under the influence of prohibited substances. Violators will be asked to leave the premises.

FITNESS FOR DUTY

Employees must report to work fit for duty and free from adverse effects of prohibited substances. This policy does not prohibit employees from lawful use and possession of prescribed medications. However, employees must consult their doctors regarding medications' impact on their fitness for duty and ability to work safely. Employees must promptly inform their supervisor of any work restrictions. the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) for questions regarding disclosure of work restrictions related to prescription medications.

EMPLOYEE ASSISTANCE

The LDSS supports employees voluntarily seeking help for alcohol or drug addiction before facing discipline or termination under LDSS policies. Such employees may use accrued paid time off, take leaves of absence, or receive accommodations as required by law⁴.

Employees may be required to document compliance with prescribed treatment and to take and pass follow-up alcohol/drug screening tests if they hold safety-sensitive or driving-required jobs, or if they have previously violated this policy. Once a reasonable suspicion drug test is initiated, unless required by the Family and Medical Leave Act (FMLA) or the Americans with Disabilities Act (ADA), the employee forfeits the opportunity for a leave of absence for treatment and will be subject to disciplinary action, up to and including termination. For questions about employees seeking assistance for addiction, contact the VDSS HR Employee Relations Team (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney.

TESTING

The LDSS reserves the right to request any employee, regardless of position, to submit to testing for prohibited substances in certain situations.

⁴ Employees may be entitled to either protection or reasonable accommodation in certain circumstances relating to alcohol and drug addiction under the Americans with Disabilities Act (ADA). For assistance, contact the VDSS HR Employee Relations Team or the locality HR representative or attorney.

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Reasonable Suspicion

The LDSS reserves the right to require any employee to submit to testing when there is a reasonable suspicion that the employee is using or under the influence of a prohibited substance at work, after a serious on-duty or off-duty accident that involved prohibited substances, or after previously testing positive for prohibited substances during work hours.

Employees are subject to testing based on, but not limited to, observations of apparent workplace use, possession, or impairment by at least two supervisors/managers. The local director should be consulted before sending an employee for testing. If additional assistance is needed, contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney.

LDSSs are encouraged to use a reasonable suspicion observation checklist to document specific observations and behaviors indicating an employee is under the influence of a prohibited substance. Appendix 7.1 contains a Reasonable Suspicion Checklist that may be used by LDSSs.

Examples of indicators or behaviors associated with impairment due to alcohol or a prohibited substance include, but are not limited to:

1. **Odors:** Smell of alcohol, urine.
2. **Movements:** Unsteady, fidgety, dizzy.
3. **Eyes:** Dilated, constricted, or watery eyes, or involuntary eye movements.
4. **Face:** Flushed, sweating, confused, or blank look.
5. **Speech:** Slurred, slow, distracted mid-thought, inability to verbalize thoughts, or abnormally rapid.
6. **Emotions:** Argumentative, agitated, irritable, drowsy.
7. **Actions:** Yawning, twitching.
8. **Inactions:** Sleeping, unconscious, no reaction to questions.

When reasonable suspicion testing is warranted, two (2) supervisors/managers should meet with the employee to explain the observations and the requirement to undergo a drug or alcohol test within two (2) hours. If two supervisors are not available, the local director, [VDSS Regional Director](#), or the assigned VDSS HR Employee Relations Consultant may assist with the meeting. Refusal of testing by an employee will be treated as a positive test result and result in disciplinary action, up to and including termination.

Employees believed to be under the influence of a prohibited substance are not permitted to drive themselves to the testing facility. Management must transport the employee or arrange for transportation from the LDSS to the facility and from the facility to his/her residence.

Other Types of Testing

The LDSS reserves the right to require employees in safety-sensitive positions and job candidates for these positions to submit to testing for prohibited substances.

Pre-Employment Testing

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The LDSS may require candidates for safety-sensitive positions to submit to pre-employment testing upon extending a conditional offer of employment. The requirement for pre-employment drug testing and subsequent testing should be included in the recruitment notice. The offer letter should state that alcohol and drug testing is a condition of employment, if required. Candidates who refuse to submit to testing or test positive will be removed from consideration for employment.

Other Employment Testing

The LDSS may require employees in safety-sensitive positions to submit to testing:

1. Randomly.
2. Immediately after a serious on-duty or off-duty accident.
3. Upon returning to work after a serious on-duty or off-duty accident that involving prohibited substances.
4. After previously testing positive for prohibited substances during work hours.

The LDSS is responsible for developing an appropriate testing protocol (see "[Helpful Hints – Developing a Testing Protocol](#)"). Employees who refuse to submit to testing for prohibited substances will be subject to disciplinary action, up to and including termination.

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Helpful Hints: Developing a Testing Protocol

Choosing a Lab

Ensure the lab is accredited and has a Medical Review Officer (MRO) available to interpret and communicate results. For assistance, visit the [Substance Abuse & Mental Health Services Administration \(SAMHSA\)](#) website for a list of accredited labs.

Drugs Identified During Testing

Specify which drugs will be tested and the parameters/thresholds to be identified in the results. Drug information can be obtained from the Drug Control Act, [Chapter 34, Title 54.1 of the Code of Virginia](#), or schedules I through V of section 202 of the Controlled Substances Act ([21 U.S.C. 812](#)) of the US Code.

Split Specimen Testing

If possible, use split specimen testing to simplify the appeal process. With split specimen testing, the sample is collected in two separate containers. Both samples are packed and shipped to the testing lab, but only one sample is tested. The other sample is retained (sealed) in case the initial sample tests positive for prohibited substances and the employee requests an appeal.

Chain of Custody

Adhere to a clear chain of custody process. The lab company should supply a chain of custody form with the testing supplies. An appropriate chain of custody process ensures:

- ◆ The employee being tested, and the samples are given a clear, unique identifier.
- ◆ All persons handling the sample are identified.
- ◆ There is a clear historical record of events with action dates.
- ◆ Samples are sealed, making tampering evident.

Frequency and Timing of Tests

Determine a system and frequency for random testing for safety-sensitive positions. Select time frames for post-accident testing (e.g., within 2 hours), return-to-work testing (e.g., 24 hours prior), and follow-up testing (e.g., monthly).

Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) with questions on developing a testing protocol.

RESPONSIBILITIES, COSTS, & OTHER CONSIDERATIONS

Responsibilities

LDSSs are responsible for establishing a relationship with a testing vendor and is strongly recommended to choose an accredited lab.

Costs

Alcohol and drug testing are operational expenses for LDSSs, and it is necessary to identify a funding source. The frequency and complexity of testing will increase costs.

Rights to Appeal

LDSSs are responsible for establishing an appeal process for employees who wish to contest their testing results and inform them of their right to appeal. LDSSs will cover all costs associated with the appeal unless the employee requests another accredited lab to review the results. See [Helpful Hints - Developing a Drug Testing Protocol](#) for guidance on using split specimen testing to facilitate the appeal process.

SEARCH OF PREMISES

The LDSS reserves the right to search its premises for prohibited substances and other contraband. Any manager or supervisor requesting a search must have a reasonable basis and seek approval from the local director.

The LDSS must contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney prior to conducting any search. The local director will deny the request if a reasonable basis does not exist. If approved, the search will consider the employee's reasonable expectation of privacy and be limited to relevant areas.

The local board has the authority to approve or deny searches initiated by the local director. If the locality has an advisory board and the local director is acting as the local board, the locality Board of Supervisors/City Council or designee has the authority to approve or deny requests.

Employees found in possession of prohibited substances or other contraband, or who refuse to cooperate during a search, are subject to disciplinary action, up to and including termination.

CRIMES INVOLVING ILLEGAL DRUGS, MISUSE OF LEGAL DRUGS, OR ALCOHOL

The LDSS prohibits all employees, contract employees, clients, and third parties from violating any federal, state, or local code that prohibits public intoxication, or manufacturing, distributing, dispensing, possessing, or using an illegal drug in or on agency property or while conducting agency business.

During work hours, the LDSS also prohibits employees and contract employees from:

1. Misusing legally prescribed or over the counter (OTC) drugs.
2. Violating any state or local code preventing the operation of a vehicle or machinery while intoxicated.

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Law enforcement personnel will be notified if criminal activity is suspected.

Crimes Occurring Outside of Work Hours

An employee's off-the-job involvement with drugs and alcohol may impact the agency or its clients. The LDSS reserves the right to take disciplinary action for criminal violations involving alcohol, misuse of legal drugs, or illegal drug use, sale, or distribution off agency premises.

Employees charged with, convicted of, pleading guilty to, or sentenced for a crime involving alcohol, illegal drugs, or misuse of legal drugs must report it to their supervisor within five (5) days. An appeal of a conviction does not affect the obligation to report it.

Failure to comply will result in disciplinary action, up to and including termination of employment. Contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney for questions related to criminal violations.

CONFIDENTIALITY

All information, documentation, and evidence related to investigations of alcohol and drug policy complaints are highly sensitive and may include details about an employee's disability or medical conditions. The LDSS will maintain strict confidentiality during investigations and for any related information.

Documentation produced during these investigations should be stored or destroyed per **Chapter 8** of the [LDSS Administrative/HR Manual](#). Any employee who knowingly shares confidential information will face disciplinary action, up to and including termination.

ETHICAL AND PROFESSIONAL STANDARDS & CONFLICTS OF INTEREST

GENERAL PROVISIONS & APPLICATION

LDSS employees must perform their duties with integrity and high ethical standards. They must disclose any relationship or activity where they could benefit personally from actions or decisions made in their official capacity.

Employees must comply with the following sections of the Code of Virginia, as amended: The State and Local Government Conflict of Interests Act, [§§ 2.2-3100 et. seq.](#); the Ethics in Public Contracting provisions of [§§ 2.2-4367 et. seq.](#); the Virginia Governmental Frauds Act, [§§ 18.2-498.1 et. seq.](#); or any local ordinance passed pursuant to [§ 2.2-3104.2](#). Failure to comply with conflict of interest policies will result in disciplinary action, up to and including termination, and may also violate state or local laws. This policy applies to all LDSS employees.

DISCLOSURE OF CONFLICTS

Any breaches of this policy or the Code of Virginia must be disclosed to the local director as soon as possible. All reports will be investigated and kept confidential as permitted by law.

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The local director should disclose any conflicts to the local board. If the local director acts as the local board, the locality Board of Supervisors/City Council or designee will approve or deny requests.

Retaliation

Retaliation against an employee who reports suspected violations in good faith is strictly prohibited. Founded complaints of retaliation will result in disciplinary action, up to and including termination.

ACCEPTING GIFTS

Items of value received for work performed for the LDSS or due to the employee's association with the LDSS must be declined or, in the case of honorariums and stipends, turned over to the LDSS. Although token gifts valued at \$30 or less (e.g., pens, notepads) may be accepted, they should be declined if the giver's intent is to obtain special consideration.

EXCEPTIONS

An employee may accept:

1. Free participation in an event or dinner to which they have been invited as a member of a group or organization.
2. A meal or other event of value greater than \$30, provided the local director has approved the event and acceptance does not constitute a conflict of interest under any section of the Code of Virginia.

ETHICAL AND PROFESSIONAL STANDARDS**Policy Violations**

The violations listed below are not all-inclusive. Any employee violating policies related to ethical and professional standards will be subject to disciplinary action, up to and including termination.

Relationships

For questions about personal relationships and potential ethical or professional conflicts interest. LDSSs should contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney.

1. Failing to disclose a personal relationship or any potential conflict of interest to the local director as soon as possible.
 - a. LDSS employees will report personal relationships to applicants for employment, current employees, current or potential vendors, grantees, or recipients of services. "Personal Relationship" includes immediate family, ex-spouses, romantic partners, roommates, or close friends.
 - b. There must be a clear separation of duties for approved personal relationships between LDSS employees. Employees reporting personal relationships must not have direct control or influence over employment or pay decisions regarding one another or violate policies related to sharing confidential information.

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- c. LDSS employees must refrain from participating in or influencing the selection of staff, consultants, or vendors who are relatives or personal friends.
2. Allowing personal beliefs and practices, whether they be political, religious, lifestyle, dietary, etc., to influence, affect, or disrupt a professional relationship with a client.
3. Allowing another profession, occupation, or affiliation to affect the professional relationship with the client.
4. Exploiting a relationship with a client for personal benefit, gain, or gratification.
5. Failing or refusing to develop or maintain the required skills or competence to perform the job.
6. Participating in activities which conflict or may appear to conflict with the best interest of the LDSS and its clients.

Travel & Gifts

The following are prohibited:

1. Incurring travel, entertainment, and related expenses that are unreasonable, unrelated to the business of the LDSS, or for personal gain.
2. Accepting gifts⁵, gratuities, favors, food, transportation, lodging or entertainment for performance of LDSS duties or to influence decisions made on behalf of the LDSS.

Protection of Information

For questions related to protecting electronic information, contact the [VDSS Information Security & Risk Management Team \(ISRM\)](#) (security@dss.virginia.gov) with questions related to protecting electronic information.

1. Failing to protect confidential, privileged, or nonpublic information, or information that cannot be disclosed to third parties.
2. Failing to protect the confidentiality and privacy of all information acquired from the client or others regarding the client and the client's family unless:
 - a. The client provides written authorization.
 - b. The information is released under the authority of a statute or court.
 - c. It is authorized by the Code of Virginia.

Illegal Activity

There are several sections of the Code of Virginia listing prohibited activities for state and local government employees, including conflicts of interest, procurement violations, and fraud. This policy section will provide a brief overview. All employees should familiarize themselves with these sections of the Code of Virginia. Engaging any activity prohibited under the Code of Virginia is a criminal offense.

To protect against prosecution, an employee must disclose any potential violations to the local director. The LDSS will seek an opinion from the county/city attorney, Office of the Attorney General, or Commonwealth Attorney before engaging in any activity that might violate the law. Failing to take the

⁵ Exceptions to this rule would be token gifts. Employees should seek clarification from the local director if uncertain of the value of the gift or of the appearance of impropriety.

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appropriate steps to prevent a violation of the Code of Virginia will result in disciplinary action, up to and including termination. Law enforcement personnel may be notified if criminal activity is suspected.

1. [The State and Local Government Conflict of Interests Act, §§2.2- 3100 et. seq.](#)

A state or local government employee may not have a personal interest in a transaction or contract of the LDSS. This interest can relate to the activities of the employee or a family member. Outside employment or other compensated activities may also be prohibited. Local government employees must follow any local ordinance passed pursuant to **§2.2-3104.2 of the Code of Virginia** which limits the value of any gifts to local employees and requires disclosure of any such gifts.

2. [The Ethics in Public Contracting Act, § 2.2-4367 et. seq.](#) & [The Virginia Governmental Frauds Act, §18.2-498.1 et. seq.](#)

These code sections describe the responsibilities of local government employees for procurement transactions or commercial dealings on behalf of the LDSS.

OUTSIDE EMPLOYMENT

GENERAL PROVISIONS & APPLICATION

LDSS employees may seek, obtain, and receive payment for outside employment, including contracts, operating or financing a business, or engaging in professional activities (e.g., keynote or motivational speaking) when not working for the local department. Outside employment policies apply to current LDSS employees and job applicants. Failure to comply with these policies will result in disciplinary action, up to and including termination.

APPROVAL & DISCLOSURE

Current Employees

A current employee must submit a written request for approval to the local director before accepting or engaging in outside employment. The employee should receive a prompt response from the director (within 2-3 business days). Permission should not be withheld unless there are reasonable grounds to believe that outside employment would:

1. Constitute a conflict of interest under the Virginia Conflict of Interest Act.⁶
2. Interfere with the employee's duties for the LDSS.
3. Compromise the integrity of the duties performed at the LDSS (e.g., operation of or employment with a childcare center or other entity regulated by the LDSS).

Approval of outside employment may be withdrawn at any time if:

1. Work performance declines.
2. Flexibility in scheduling local department work activities is compromised.

⁶ [§ 2.2- 3100 et. seq.](#)

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3. A dual relationship exists with clients, customers, or entities served by the LDSS (e.g., serving as guardian ad litem for a child receiving services from the LDSS).
4. A conflict of interest under any section of the Virginia Conflict of Interest Act is made known.

The local director must seek approval from the local board before accepting outside employment. If the locality has appointed an advisory board and the local director is the administrative entity, the locality Board of Supervisors/City Council or designee has the authority to approve or deny requests.

Applicants/Candidates for Employment

Outside employment must be disclosed at the start of the recruitment and selection process. Applicants will be removed from consideration if conflicts are apparent, and the applicant refuses to discontinue the outside employment.

The local director must approve of the outside employment before extending a conditional offer. The candidate will be removed from consideration if approval is denied for a valid reason and the candidate refuses to end the outside employment. Contact the [VDSS HR Employee Relations Team \(hr.employeerelations@dss.virginia.gov\)](mailto:hr.employeerelations@dss.virginia.gov) with questions about outside employment approval.

POLICY VIOLATIONS

Any employee violating outside work policies will be subject to disciplinary action, up to and including termination. These violations include, but are not limited to:

1. Accepting or engaging in unauthorized outside employment.
2. Refusing to disclose a known dual relationship or conflict of interest.
3. Refusing to discontinue outside employment after LDSS approval has been withdrawn.
4. Unauthorized use of agency systems, tools, or equipment to perform work for another employer.
5. Unauthorized use of or sharing (verbal or electronic) of confidential agency information to perform work for another employer.
6. Removing confidential documents or files from the LDSS to perform work for another employer.
7. Conducting or soliciting any outside business during agency work hours.
8. Poor job performance resulting from approved outside employment, including absenteeism, tardiness, leaving early, refusing to travel, refusal of schedule changes, or refusal to work overtime.
9. Fraudulent use of sick leave to perform work for another employer.

LDSSs reserve the right to withdraw approval of outside employment at any time based on the circumstances and severity of the offense.

PERSONAL APPEARANCE

LDSS employees should dress and groom appropriately for their working conditions. The LDSS may apply specific dress and grooming requirements based on business needs.

POLITICAL ACTIVITY

GENERAL PROVISIONS & APPLICATION

The Hatch Act⁷ is a federal law limiting certain political activities of federal, state, and local government employees. Political activity policies apply to all LDSS employees⁸. Failure to comply will result in disciplinary action, up to and including termination, and may also be a violation of federal law.

PERMITTED CONDUCT

Employees may:

1. Participate in partisan political elections, including campaigning for candidates, making speeches, writing letters, drafting speeches, and soliciting voters. Employees may also attend political meetings or rallies.
2. Fundraise for political candidates or parties, including making financial contributions and soliciting and collecting voluntary contributions.
3. Serve as an election official, poll watcher, checker, or challenger for a political party or candidate.
4. Participate in political party management, including holding office, being a member, attending and participating in political conventions, or volunteering for candidates or parties.
5. Hold or run for a partisan public office, provided the employee's salary is **not** fully paid, directly or indirectly, by loans or grants from the United States or a federal agency. An employee may hold a partisan office if appointed to a vacancy.

PROHIBITED CONDUCT

Employees shall not:

1. Use the employee's official authority or influence to interfere with or affect the result of a nomination or election to public office or position.
2. Directly or indirectly coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.
3. Be a candidate for a partisan public elective office in a primary, general, or special election if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a federal agency.

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⁷ [5 C.F.R. § 151 \(§§ 1501-1508\).](#)

⁸ [§ 22VAC40-675-210](#)

RESTRICTIONS ON POLITICAL ACTIVITY DURING DUTY HOURS & OUTSIDE EMPLOYMENT

While on duty, LDSS employees are prohibited from engaging in political activities, including using social media for political purposes, participating in political activities in government offices, wearing official uniforms or insignia for political purposes, or using government vehicles for political activities.

Certain permitted political activities may involve compensation and require completion of tasks during work hours. Employees should refer to the [“Outside Employment”](#) section of this chapter and seek guidance from the [VDSS Local HR Support Team](#) regarding related topics, including the appropriate use of leave.

PENALTIES FOR VIOLATING THE LAW

The LDSS reserves the right to exercise disciplinary action, up to and including termination, in cases where employees violate political activity policies. Conduct that violates LDSS policy may also violate the Hatch Act.

The [U.S. Office of Special Counsel \(OSC\)](#) is responsible for investigating claims of wrongdoing under the Hatch Act. Charges of wrongdoing are brought by the OSC to the Merit System Protection Board. If upheld, the LDSS must terminate the employee. Contact the locality HR representative or attorney or the OSC for more information relating to the Hatch Act or violations of the Hatch Act.

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SECTION II: WORKPLACE INVESTIGATIONS

The LDSS must notify the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) of the need for a workplace investigation and may contact them with questions about the process. Contact the assigned [VDSS Regional Director](#) for the LDSS or the county/city attorney for assistance with completing investigations.

GENERAL INFORMATION & APPLICATION

Federal laws¹ mandate workplace investigations for claims of harassment, discrimination, retaliation, violence, or potential safety threats. **All complaints must be taken seriously**, and the LDSS should contact the VDSS HR Employee Relations Team if unsure about the necessity of an investigation.

This policy applies to all LDSS employees, interns, volunteers, contractors, contract employees, subcontractors, clients, and other third parties in the workplace. All are encouraged to report workplace wrongdoing.

RECEIVING COMPLAINTS

All LDSSs should establish an agency protocol for receiving complaints and communicate the protocol to all employees.

APPOINTING AN INVESTIGATOR

The local director should lead investigations and involve agency staff only when necessary. Contact the VDSS HR Employee Relations Team if appointing someone other than the local director or assistance is needed in determining who should be involved.

INVESTIGATION OF A LOCAL DIRECTOR

If a complaint involves the local director or if having the local director lead the investigation would create a conflict of interest, the local board should conduct the investigation in collaboration with the VDSS Regional Director. If the LDSS has an advisory board and the local director serves as the administrative entity (when the local director is acting as the local board), the locality Board of Supervisors/City Council or designee should act as or appoint an investigator, working in collaboration with the VDSS Regional Director.

¹ Title VII, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Occupational Safety and Health Act (OSHA), the Sarbanes-Oxley Act, etc.

CONFIDENTIALITY

Conducting a thorough investigation requires revealing *some* information to the accused party and potential witnesses for coherent discussion. Strict confidentiality cannot be guaranteed, but employees and agency partners, such as VDSS or the locality HR representative or attorney, involved in the investigation must maintain confidentiality to the greatest extent possible. Those who willfully or unnecessarily disclose information related to ongoing or closed investigations will be subject to disciplinary action, up to and including termination.

RETALIATION

Retaliation, including verbal, written, electronic, or physical threats against individuals who report unlawful discrimination, harassment, or other LDSS policy violations, is strictly prohibited. Any substantiated retaliation complaint will result in disciplinary action, up to and including termination of employment. If there is suspicion or evidence of retaliation, LDSSs must contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov).

USE OF SUSPENSION OF ADMINISTRATIVE LEAVE

Refer to “[Procedures for Suspension Pending LDSS Investigation](#)” or “[Procedures for Suspension Pending Law Enforcement Investigation or Court Action](#)” for details on using suspension or administrative leave during investigations.

INVESTIGATION TASKS

Upon receipt of a complaint, promptly initiate the investigation (within 1-2 business days) and aim for timely completion. Refer to “[Helpful Hints – Planning an Investigation](#)” for further guidance.

1. Thoroughly review the complaint and gather all relevant physical evidence, which may involve taking photographs or collecting pertinent items.
2. Identify potential witnesses to the alleged violation.
3. Notify the VDSS HR Employee Relations Team of the complaint and engage other necessary parties, such as additional LDSS staff, the [VDSS Regional Director](#), or the county/city attorney.
4. Depending on the complaint's nature:
 - a. Take necessary steps to protect the complainant from retaliation.
 - b. Report to state or federal oversight agencies (e.g., VOSH/OSHA) or involve law enforcement for criminal violations.
 - c. Consult with the VDSS HR Employee Relations Team, the VDSS Regional Director, or the locality HR representative or attorney before making decisions.
5. Establish an organized investigation file.

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6. Conduct interviews with the complainant, witnesses, and the accused party. Obtain written statements from all participants. Employees are free to leave an interview at any time without coercion to remain.
7. Conduct follow-up interviews as necessary.
8. Collaborate with agency partners involved in decision-making to review evidence and information gathered, determining appropriate findings and any potential [level of disciplinary action](#).
9. Prepare a comprehensive summary report including all evidence and statements.
10. Close out the investigation file; refer to **Chapter 8** of the [LDSS Administrative/HR Manual](#) for guidelines on maintaining investigation records.

INVESTIGATION FINDING

LDSS investigations yield three (3) possible findings:

1. **Founded:** A violation of LDSS policies, workplace rules, or law is substantiated. Notify the accused party's supervisor and meet with them to discuss the finding and subsequent disciplinary actions. Refer to "[Disciplinary Action](#)" and "[Procedures for Disciplinary Suspension](#)" for details. Inform complainants and witnesses that the investigation is concluded. Avoid disclosing specifics of the investigation or disciplinary measures unless necessary for safety reasons.
2. **Unfounded:** No violation of LDSS policies, workplace rules, or law is found. Notify all parties involved that the investigation is complete, and that evidence did not support the allegations. See "[Procedures for Suspension Pending LDSS Investigation](#)" for further guidance.
3. **Inconclusive:** The evidence gathered does not conclusively determine whether a violation occurred. Notify all parties that the investigation is complete and inconclusive. Treat an 'inconclusive' finding similarly to an 'unfounded' finding regarding suspension procedures. See [Procedures for Suspension Pending LDSS Investigation](#) for more information.

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Helpful Hints: Planning for an Investigation

Choose an Appropriate Interview Space

Fully maintain confidentiality. Ensure a private office or room is selected or reserved where interviewees can discreetly enter and leave, interruptions are minimized, and conversations cannot be overheard by passersby. If suitable space is unavailable within LDSS facilities, inquire with your locality about meeting rooms in neighboring county or city buildings. Remember, interviewees are free to terminate the interview at any time.

Create an Investigation Timeline

Develop a timeline that includes preparation discussions with agency partners (VDSS, locality HR representative or attorney), interviews with all involved parties, review sessions, and administrative time to finalize the investigation summary report. Allocate sufficient time between interviews for note-taking and accurate documentation of information. Promptly complete the investigation summary report following the conclusion of the investigation.

Draft Questions in Advance

Thoroughly review the complaint and available evidence before formulating interview questions. Questions should aim to elicit information without leading the interviewee or injecting bias or opinion. Questions posed to the accused party should not assume guilt.

Tips for Conducting Interviews

- ◆ Present relevant workplace rules or standards of conduct to all interviewees at the outset. Begin each interview with reminders regarding retaliation and confidentiality.
- ◆ The primary objective of an investigation interview is to gather information. The interviewer should maintain impartiality and objectivity, speaking only to ask questions and probe for additional details.
- ◆ Refrain from offering personal opinions or engaging in casual discussions unrelated to the investigation.
- ◆ New evidence or information introduced during interviews may necessitate follow-up interviews.

For guidance on planning a workplace investigation, contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov)

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PART II: DISCIPLINARY ACTION

POLICY STATEMENT

The purpose of this policy is to outline disciplinary offenses and the corresponding corrective actions for violations of the standards of conduct, including termination of employment. Part II of this policy is grounded in [§§ 63.2-217](#) and [63.2-219](#) of the Code of Virginia, and [§§ 22VAC40-675-30](#), [22VAC 40-675-180](#), [22VAC40-675-190](#), [22VAC40-675-210](#), and [22VAC40-675-220](#) of the Administrative Code of Virginia. Relevant sections from the Code of Virginia will be cited within their respective policy areas.

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS.

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SECTION I: CORRECTIVE ACTION

Corrective action addresses performance and behavioral issues and is distinct from disciplinary action, though it is not required before disciplinary measures can be taken. Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) for assistance with corrective action. Additionally, see the Standards of Conduct policy in **Chapter 6** of the [LDSS Administrative/HR Manual](#).

COUNSELING

Counseling involves private discussions between an employee and supervisor regarding the nature of an offense, its significance, and steps to improve performance or behavior. It is suitable for minor policy infractions or performance issues that minimally impact business operations.

VERBAL COUNSELING

Verbal counseling may be conducted without written documentation. These confidential discussions outline the desired improvements in performance or conduct and potential consequences if issues persist. A summary of the discussion is noted in the supervisor's confidential file.

WRITTEN COUNSELING

Written counseling may be documented through letters, memoranda, electronic communications, or the [LDSS Notice of Improvement](#) form. It emphasizes the seriousness of minor misconduct or poor performance when verbal counseling has not resolved the issue or as the initial response to first-time offenses. The LDSS Written Notice Form should not be used for counseling documentation.

1. Documentation related to counseling should be kept in the confidential supervisor's files, not the general employee personnel file, unless used to support future disciplinary actions.
2. Employees must receive a copy of written counseling, which is not grievable.

For further inquiries on counseling or its documentation, contact the VDSS HR Employee Relations Team.

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SECTION II: DISCIPLINARY ACTION

When counseling fails to correct misconduct or performance issues, or when more serious offenses occur, management must address the matter through disciplinary action. Disciplinary action involves issuing a written notice using the [LDSS Written Notice Form](#), and may include suspension, transfer, demotion, or termination of employment. Transfers or demotions may also involve disciplinary salary adjustments.

Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) for assistance with disciplinary action. Additionally, see the Standards of Conduct policy in **Chapter 6** of the [LDSS Administrative/HR Manual](#).

OFFENSE GROUPS

Offenses are categorized into three (3) groups based on the severity of the performance or behavioral issue, with Group I being the least severe and Group III the most severe. The offense group level must be indicated on the written notice.

Mitigating and aggravating factors may influence the determination of the offense level. Conduct listed at one level may, under certain circumstances, be issued at a higher or lower level. See “[Mitigating and Aggravating Factors](#)” for more details.

WRITTEN NOTICES

ACTIVE LIFE OF WRITTEN NOTICES

The active duration of a written notice is as follows:

1. **Group I offense:** Two (2) years
2. **Group II offense:** Three (3) years
3. **Group III offense:** Four (4) years

Active written notices should be stored in the employee’s General Employee File. Refer to **Chapter 8** of the [LDSS Administrative/HR Manual](#) for further information on managing the General Employee File.

INACTIVE WRITTEN NOTICES

A written notice becomes inactive at the end of its active lifespan. For example, a written notice for a Group I offense issued on 4/21/21 would be inactive as of close of business on 4/21/23. Inactive notices should remain in the General Employee File.

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Inactive notices cannot be considered for the total accumulation of written notices, nor can they be used in any proceeding to demonstrate that the employee had knowledge of a rule, warning of misconduct, or a pattern of unacceptable conduct. However, inactive and active written notices may be considered together when determining mitigating or aggravating factors.

MITIGATING & AGGRAVATING FACTORS

Mitigating and aggravating factors are considered when determining the level of discipline and the necessity for suspension or termination.

Mitigating Factors

Mitigating factors may reduce the severity of disciplinary action (e.g., an employee's long service record or prior satisfactory performance). Considering mitigating factors may result in:

1. Demotion or transfer with a disciplinary salary reduction or suspension, as an alternative to termination.
2. A suspension for less than thirty (30) days.
3. Issuance of a written notice from a less severe group (Group I vs. Group II).

Documentation should reflect that mitigating factors were considered in the event the same behavior or conduct occurs in the future.

Aggravating Factors

Aggravating factors increase the severity of disciplinary action. When combined with misconduct, aggravating factors justify issuing a higher level of discipline (e.g., willful deliberate misconduct or conduct causing severe harm to other employees or extensive property damage). Aggravating circumstances may result in more severe discipline or termination rather than suspension.

Documentation should reflect that aggravating factors were considered in the event the same behavior or conduct occurs in the future.

IMPACT OF THE GRIEVANCE PROCEDURE ON WRITTEN NOTICES

Additional dispositions, other than "active" or "inactive," may apply to written notices due to the outcome of the grievance procedure. These dispositions and the full grievance procedure will be discussed in [Part IV](#) of this chapter.

OFFENSE GROUP EXAMPLES & DISCIPLINARY PROCEDURES

Below are examples of offenses grouped by level, along with recommended disciplinary procedures. The lists **are not exhaustive**, and actual disciplinary actions may vary based on mitigating or aggravating factors. Please note that any offense that undermines the effectiveness of LDSS' operations may be considered unacceptable and treated in a manner consistent with the provisions of this chapter. Procedures and other information specific to suspension are covered in [Section III, "Suspension Procedures."](#)

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GROUP I OFFENSE EXAMPLES & DISCIPLINARY PROCEDURES

Group I offenses involve less severe behaviors. Accumulating four (4) active Group I written notices results in termination of employment. The [LDSS Written Notice Form](#) must be used for all Group I written Notices.

Offense Examples

1. Unsatisfactory attendance or excessive tardiness.
2. Abuse of LDSS time, including unauthorized absences, personal business during work hours, leaving the work site unattended, or misuse of sick leave.
3. Use of obscene language or gestures.
4. Inadequate or unsatisfactory work performance.
5. Disruptive behavior.
6. Conviction of a moving traffic violation while using an LDSS-owned vehicle or while transporting clients.
7. Sleeping on the job.

Disciplinary Procedures

Group I written notices are cumulative. Inactive notices do not count toward the cumulative total.

1. For a first offense, verbal or written counseling is appropriate, though the LDSS may issue a Group I written notice at its discretion. No additional disciplinary actions (such as suspension) should accompany the notice.
2. Absent [mitigating factors](#), a repeat of the same or similar active Group I offense should result in the issuance of a Group II offense notice. **This does not apply to unsatisfactory attendance or excessive tardiness (see #5).**
3. Accumulating three (3) active Group I offenses warrants a suspension without pay for at least five (5) but no more than ten (10) workdays.
4. A fourth active Group I offense warrants termination. Alternatively, LDSS' may:
 - a. Suspend without pay for up to thirty (30) workdays.
 - b. Demote or transfer the employee with a disciplinary salary reduction of at least 5%.
5. Unsatisfactory Attendance or Excessive Tardiness: Disciplinary action is limited to issuing written notices (1-4) without additional employment action (e.g., suspension). A fourth active Group I offense warrants termination.

GROUP II OFFENSE EXAMPLES & DISCIPLINARY PROCEDURES

These offenses are more severe and may result in termination of employment with the accumulation of two active Group II written notices or offenses. The LDSS Written Notice Form must be used for all Group II written Notices.

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Offense Examples

1. Refusal to follow a supervisor's instructions, perform assigned work, or comply with workplace rules and policies.
2. Knowingly or with careless indifference violating a safety rule where bodily harm is not imminent.
3. Leaving the work site during work hours without permission.
4. Failure to report to work as scheduled without notifying the supervisor properly.
5. Unauthorized use or misuse of LDSS property, including computers or records.
6. Neglecting duties or showing indifference to critical deadlines or other work demands.
7. Carelessness in recording and maintaining LDSS records.
8. Breaching client confidentiality or unauthorized disclosure of LDSS information.
9. Violating the "[Alcohol & Drugs policy](#)."
10. Violating **Chapter 1** (Equal Employment Opportunity) of the [LDSS Administrative/HR Manual](#).

Disciplinary Procedures

Group II written notices are cumulative. Inactive notices do not count toward the cumulative total.

1. For a first offense, issue a Group II written notice. The LDSS has the option of suspending the employee without pay for up to ten (10) workdays.
2. A second offense warrants termination. Alternatively, LDSS' may:
 - a. Suspend without pay for up to thirty (30) workdays.
 - b. Demote or transfer the employee with a disciplinary salary reduction of at least 5%.
3. Absent [mitigating factors](#), termination of employment may occur for the accumulations of:
 - a. Three active Group I offenses and One Group II offense.
 - b. Two Group II offenses.

In lieu of discharge, LDSSs may suspend without pay for up to thirty (30) workdays or demote or transfer the employee with a disciplinary salary reduction of at least 5%.

GROUP III OFFENSE EXAMPLES & DISCIPLINARY PROCEDURES

These offenses are of a serious nature, with a first Group III written notice or offense warranting termination of employment. The [LDSS Written Notice Form](#) must be used for all Group III written Notices.

Offense Examples

1. Absence without proper authorization or a satisfactory reason.
2. Falsifying a public record, including employment records, vouchers, reports, insurance claims, time records, leave records, or other LDSS documents.
3. Damaging or defacing LDSS records, LDSS property, or property of other persons.
4. Theft or unauthorized removal of LDSS records, LDSS property, or the property belonging to others.
5. Gambling on LDSS property or during work hours.
6. Fighting or committing acts of violence in the workplace or while conducting LDSS business.
7. Knowingly or with careless indifference violating safety rules where there is a threat of physical harm.

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8. Participating in any kind of work slowdown or similar concerted interference with LDSS operations.
9. Illegal possession or use of firearms, dangerous weapons, or explosives in the workplace.
10. Threatening, coercing, or physically assaulting individuals associated with the LDSS, including employees, supervisors, interns, volunteers, clients, visitors, and contractors.
11. Receiving criminal convictions for conduct related to job performance, on or off duty, that threatens agency operations or endangers LDSS employees or the public.
12. Failure to report charges or convictions for the misdemeanor crime of domestic violence for employees required to carry firearms or authorized to do so.
13. Appropriating or using LDSS information for personal advantage or gain.
14. Refusal to work overtime hours, holidays, weekends, evenings, or during emergency situations.

Disciplinary Procedures

1. For a first offense, issue a Group III written notice; termination of employment is warranted. In lieu of termination, the agency may:
 - a. Suspend without pay for up to thirty (30) workdays; or
 - b. Demote or transfer with disciplinary salary reduction of at least 5%.
2. If suspended instead of terminated, notify the employee that any subsequent disciplinary action will likely result in termination if the employee is suspended initially.

NOTICE OF ANTICIPATED DISCIPLINARY ACTION

Prior to any disciplinary suspension, demotion or transfer with a salary reduction, or termination, an employee must receive verbal or written notification of the offense(s) and an explanation of the LDSS's basis for the anticipated disciplinary action. Non-probationary employees, including those on conditional status, must be provided with a reasonable timeframe (i.e., 1-2 business days after receiving notice) to request a hearing, also known as a Loudermill hearing, to respond to the potential disciplinary action¹. Probationary employees are considered "at will employees and have no right to a hearing. LDSSs should work with their locality HR representative or attorney to develop a consistent process for Loudermill hearings.

NOTE: A Loudermill hearing is **NOT** the same as a grievance hearing. The Loudermill hearing is a pre-disciplinary hearing allowing an employee the opportunity to respond to pending disciplinary action before a final decision is made.

CIRCUMSTANCES WHERE ADVANCED NOTICE IS NOT REQUIRED

An employee may be immediately removed from the work area without advance notice under the following circumstances:

¹ Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

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1. The employee's presence at the worksite may pose harm to the employee, other employees, clients, or third parties.
2. The employee's presence makes it impossible for the LDSS to conduct business.
3. The employee's work performance may constitute negligence regarding the LDSS' duties to the public or other employees.
4. The employee may destroy LDSS property or records.

After the employee's removal from the worksite, written notice of the anticipated disciplinary action should be provided as soon as possible. **The employee should be given a reasonable opportunity to respond before any disciplinary action is finalized.**

ADDITIONAL GUIDELINES & RECOMMENDATIONS

Verbal notification is recommended for Group I offenses only. A summary of the conversation should be documented and placed in the General Employee File. Signatures are not required on the summary.

Written notification of anticipated disciplinary action is distinct from a formal written notice and should not be recorded on the LDSS Written Notice Form. It can be submitted as a letter, memorandum, or electronic communication and placed in the employee's General Employee File without requiring signatures.

If electronic communication is not possible, it is recommended that written notification of anticipated disciplinary action be sent to employees by United States Postal Service (USPS) Certified Mail.

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SECTION III: SUSPENSION PROCEDURES

This section will cover the procedures for suspension, including pay and benefits considerations. LDSSs may suspend employees for up to thirty (30) days, either with or without pay. LDSSs should consider the frequency and severity of the offense(s) and any [mitigating or aggravating factors](#) in their decision-making process. Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) with questions about suspension. Contact the locality benefits administrator for all questions about employee benefits.

TYPES OF SUSPENSION

There are three (3) types of suspension:

1. Disciplinary Suspension
2. Suspension Pending LDSS Investigation
3. Suspension Pending Law Enforcement Investigation or Court Action

PROCEDURES FOR DISCIPLINARY SUSPENSION

Disciplinary suspensions may occur in relation to the disciplinary actions outlined in [“Offense Group Examples & Disciplinary Procedures.”](#)

SUSPENSION RECOMMENDATIONS

These are the *general* recommendations from Offense Group Examples & Disciplinary Procedures. A written notice always accompanies disciplinary action, and the employee must receive advance notice unless an extreme circumstance prevents it. For more information, see [“Circumstances Where Advanced Notice is Not Required.”](#)

1. An accumulation of three (3) active Group I offenses warrants inclusion of a suspension without pay for at least five (5) but no more than ten (10) workdays.
2. A first Group II offense warrants a suspension without pay for up to ten (10) workdays.
3. At the discretion of the LDSS, an employee receiving a first-offense Group III written warning may be suspended without pay for up to thirty (30) workdays in lieu of termination.

CONSIDERATIONS FOR EXEMPT EMPLOYEES

For the violations unrelated to safety or where there is no threat of bodily harm, the suspension period must be in increments of **full days**. The suspension may be applied for less than a full day for safety violations where there is a threat of bodily harm. Contact the VDSS Employee Relations Team with questions about safety rules.

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ACCESS TO PREMISES

Suspended employees are not allowed on the LDSS premises except to file and process a grievance or to fulfill previously scheduled court obligations.

ABILITY TO USE ANNUAL LEAVE

Employees on disciplinary suspension are not permitted to use annual leave to cover the suspension period.

PAY & BENEFITS

See [“Pay & Benefits During Suspension.”](#)

RETURN TO WORK

Upon completion of the suspension, the employee is reinstated to his/her position and access to the premises is restored.

PROCEDURES FOR SUSPENSION PENDING LDSS INVESTIGATION

The LDSS may receive an employee complaint requiring investigation to determine if a policy violation occurred. Depending upon the type and severity of the complaint, it may be necessary to place the employee on suspension until the investigation is completed. Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) before beginning a workplace investigation.

SUSPENSION RECOMMENDATIONS

The period of suspension pending an LDSS investigation is limited to ten (10) workdays. If the LDSS cannot reach a decision regarding disciplinary action within ten (10) workdays, the employee shall be permitted to return to work (at the same or a different position with no loss in pay) pending completion of the LDSS investigation or be placed on administrative leave. If possible, the employee should receive advance notice.

INVESTIGATION FINDING

1. **Founded:** The LDSS will follow the guidelines under [“Procedures for Disciplinary Suspension.”](#) The period of suspension pending completion of the LDSS investigation will count towards the period of disciplinary suspension. A written notice always accompanies disciplinary action.
2. **Inconclusive or Unfounded:** The LDSS must reinstate the employee with back pay for the suspension period or charge the time to administrative leave with pay.

See [“Investigation Finding”](#) for more information.

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CONSIDERATIONS FOR EXEMPT EMPLOYEES

For the violations unrelated to safety where there is no threat of bodily harm, the suspension period must be in increments of **full days**. The suspension may be applied for less than a full day for safety violations where there is a threat of bodily harm. Contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) with questions about safety rules.

ACCESS TO PREMISES

Suspended employees are not allowed on the LDSS premises except to file and process a grievance or to fulfill previously scheduled court obligations.

ABILITY TO USE ANNUAL LEAVE

At the discretion of the LDSS, the employee's accrued annual leave may be used to cover the suspension period to avoid the loss of earnings. Annual leave used during the suspension must be reinstated if the investigation concludes that no employee misconduct occurred.

PAY & BENEFITS

See "[Pay & Benefits During Suspension](#)."

RETURN TO WORK

If disciplinary suspension was necessary, upon completion of the suspension, the employee is reinstated to his/her position and access to the premises is restored.

**PROCEDURES FOR SUSPENSION PENDING LAW ENFORCEMENT
INVESTIGATION OR COURT ACTION**

The LDSS may receive a valid notification that an employee is being investigated by a federal, state, or local law enforcement agency, or the employee is involved in a court proceeding.

SUSPENSION RECOMMENDATIONS

The ten (10) day limit on suspensions pending LDSS investigations does not apply if:

1. The court action or investigation involves alleged criminal misconduct on the part of the employee.
2. Retaining the employee could constitute negligence regarding the LDSS's duties to the public and other LDSS employees.

Otherwise, the ten (10) day limit should be followed. An employee should receive notification of a suspension imposed during a law enforcement investigation or court action by written memorandum and not by the Written Notice form. For assistance with matters related to criminal or civil proceedings involving employees. For assistance with matters related to criminal or civil proceedings involving

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employees, contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney.

DISPOSITION OF INVESTIGATION

Upon the conclusion of a law enforcement investigation or court action, the LDSS has the discretion to impose disciplinary action, including termination. If the employee is cleared of misconduct, the LDSS must reinstate the employee with full back pay.

CONSIDERATIONS FOR EXEMPT EMPLOYEES

For violations unrelated to safety or where there is no threat of bodily harm, the suspension period must be in increments of **full days**. The suspension may be applied for less than a full day for safety violations where there is a threat of bodily harm. For questions about safety rules, contact the VDSS HR Employee Relations Team (hr.employeerelations@dss.virginia.gov).

ACCESS TO PREMISES

Suspended employees are not allowed on the LDSS premises except to file and process a grievance or fulfill previously scheduled court obligations.

ABILITY TO USE ANNUAL LEAVE

At the discretion of the LDSS, the employee's accrued annual leave may be used to cover the suspension period to avoid the loss of earnings. Annual leave used during the suspension must be reinstated if the investigation concludes no employee misconduct occurred.

PAY & BENEFITS

See "Pay & Benefits During Suspension" below.

RETURN TO WORK

If disciplinary suspension was necessary, upon completion of the suspension, the employee is reinstated to his/her position and access to the premises is restored.

PAY & BENEFITS DURING SUSPENSION

These guidelines apply to all suspension types unless otherwise noted.

GENERAL

1. All suspensions are **without pay**. However, an employee suspended pending an LDSS investigation, law enforcement investigation, or court action may use accrued annual leave to receive pay.

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2. If a suspended employee is required to report for court proceedings, the employee **will be compensated for each hour worked**.
3. At the discretion of the local director, a suspended employee may be placed on paid or unpaid administrative leave.

PERFORMANCE INCREASES & LEAVE ACCRUAL

An employee's eligibility for performance increases may be affected by the time on suspension. No annual or sick leave will be earned while on suspension, and suspensions exceeding fourteen (14) calendar days will affect an employee's length of service for purposes of annual and sick leave accrual.

HEALTH INSURANCE

A suspended employee's health insurance coverage continues until the end of the month in which the suspension began. The LDSS must contact the locality benefits administrator if the suspension, due to its length, results in a termination of health plan coverage. The suspended employee must be provided a COBRA Notice and a Continuation of Health Plan Coverage form. The employee may elect to continue individual/family coverage by paying the monthly insurance premiums (both the employee's and the LDSS' contribution) in advance each month.

Reinstatement

If an employee is reinstated **with back pay** covering any portion of the suspension, the LDSS will refund any health plan premiums or other premium payments the employee paid during the suspension. If an LDSS reinstates a suspended employee **without back pay**, there will be no reimbursement for health plan premiums paid during the suspension.

Health insurance is administered by the locality. Contact the locality benefits administrator with questions specifically related to the coverage continuation, cost of premiums, and other premium payments affected by suspension.

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PART III: SEPARATION FROM EMPLOYMENT

POLICY STATEMENT

The purpose of this policy is to outline procedures for separation from employment, which can be voluntary or involuntary. Types of separation include but are not limited to resignation, job abandonment, death, termination (disciplinary and non-disciplinary), and layoff. Retirement is not facilitated by VDSS and is not covered in this manual. For retirement information, please contact your locality or the Virginia Retirement System (VRS).

[§§ 63.2-217](#) and [63.2-219](#) of the Code of Virginia, and [§§ 22VAC40-675-30](#), [22VAC40-675-160](#), [22VAC40-675-170](#), and [22VAC40-675-190](#) of the Administrative Code of Virginia serve as the basis for Part III of this policy. Relevant sections of the Code of Virginia will be referenced as applicable.

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS.

Additional Information:

Per [§ 22VAC40-675-50](#) of the Administrative Code of Virginia, in local jurisdictions where there is a layoff policy that applies uniformly to all local government employees, the local department of social services may deviate the locality policy, provided the deviation is approved by [VDSS HR Policy Team](#) (hr.employeerelations@dss.virginia.gov) as being in substantial conformity with this policy.

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SECTION I: VOLUNTARY & INVOLUNTARY SEPARATION

VOLUNTARY SEPARATION

Voluntary separation occurs when an employee chooses to end employment with the LDSS. There are three (3) reasons for voluntary separation:

1. Resignation
2. Job abandonment
3. Death

Reasons for voluntary separation are discussed in detail in [Section II](#).

INVOLUNTARY SEPARATION

Invuntary separation occurs due to disciplinary or non-disciplinary reason. For the purposes of this the LDSS Administrative/HR Manual, 'involuntary separation' is referred to as 'termination.' Terminations are discussed in detail in [Section III](#).

SEPARATION CLASSIFICATION MAY CHANGE

Separations may be classified differently based on their circumstances. Examples include layoff and failure to return from an approved leave of absence. For instance, a failure to return from leave where the employee ends all contact with the employer is considered a voluntary separation for job abandonment. However, if the employee fails to return due to an inability to perform essential job functions and the LDSS cannot reasonably accommodate, it constitutes involuntary, non-disciplinary termination. [Section III Termination, "Non-Disciplinary Termination,"](#) and [Section IV, "Layoff,"](#) provide further details.

A separation classified as voluntary but later deemed involuntary must be corrected and treated as a termination. Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) for assistance with appropriate classification.

REQUIREMENT TO RETURN ALL LDSS PROPERTY

LDSS employees must promptly return **all** LDSS property upon separation, including keys, credit cards, phones, laptops, electronics and other tools.

SECTION II: REASONS FOR VOLUNTARY SEPARATION

Resignation, job abandonment, and death are considered *voluntary* reasons for separation from employment. For questions regarding voluntary separation, contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov).

RESIGNATION

Resignation is an employee's voluntary decision to terminate employment with the LDSS.

ADVANCE NOTICE

An employee planning to resign should provide the local director with at least two (2) weeks' notice. Failure to provide reasonable notice may be documented in the employee's personnel file. The effective date of separation is the last date that the employee worked.

Once received by the LDSS, a resignation is final unless:

1. The local director or local board intends to make a counteroffer within five (5) workdays of receiving the resignation, as permitted in the approved local compensation plan.
2. The employee submits written notice of rescission to the local director or local board (if the employee is the local director) within five (5) workdays and the rescission is accepted in writing.

Acceptance of a rescission of resignation is at the discretion of the local director or local board and is not grievable. If there is an advisory board and the local director is the administrative entity (acting as the local board), the authority to approve or deny the rescission rests with the Board of Supervisors/City Council or their designee.

Waiver of Advanced Notice

Advanced notice is waived if the employee fails to return to work following an approved leave of absence, FMLA, sick leave, paid parental leave, or job-related injury.

JOB ABANDONMENT

Job abandonment occurs when an employee does not report to work as scheduled and does not notify the LDSS of the intention to quit, often referred to as "no-call/no-show." The LDSS should develop a policy defining how many days of no notification will be considered job abandonment. The effective date of separation is the last day the LDSS attempted to contact the employee without success. For example, if

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the policy is to attempt contact for three (3) full business days, the effective date of separation would be at the end of the third day.

RECOMMENDATIONS

1. Investigate the employee's absence to determine if there is a valid reason (e.g., emergency, medical condition, incarceration).
2. Three (3) full business days typically allows enough time to contact the employee and determine if another personnel action is required (e.g., FMLA, STD, bereavement leave).
3. Document all attempts to reach the employee.

VOLUNTARY SEPARATION — RETURN FROM LEAVE

Failure to return from any approved leave of absence is treated as a voluntary separation for job abandonment if the employee fails to notify the LDSS of any intent to return to work. Document all attempts to contact the employee.

The effective date of separation is the last day the employee was on leave. Contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney with questions on the voluntary separation of employees who fail to return from leave.

DEATH

Upon notification of an employee's death, the LDSS should:

1. Notify the locality benefits administrator, VRS, and any other parties who are responsible for processing all appropriate beneficiary payments from the various benefits plans.
2. Notify the locality payroll office and provide the deceased employee's timecard, if applicable.
3. Process the separation of employment effective as of the date of death.

Details regarding the administration of benefits upon an employee's death are discussed in more detail in [Section V](#).

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SECTION III: TERMINATION

A termination is an *involuntary* loss of employment for disciplinary or non-disciplinary reasons. Contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) with questions about termination.

DISCIPLINARY TERMINATION

Disciplinary terminations may occur for the following reasons:

1. Violation of the [Standards of Conduct](#), workplace rules, or federal, state, or local law.
2. Sustained substandard work performance.

The effective date of the termination is the last day the employee worked.

PRE-TERMINATION NOTICE & HEARING

Prior to any termination, an employee must receive verbal or written notification of the offense(s) and an explanation of the LDSS's basis for the anticipated disciplinary action. Non-probationary employees, including those on conditional status, must be provided with a reasonable timeframe (i.e., 1-2 business days after receiving notice) to request a hearing, also known as a Loudermill hearing, to respond to the potential disciplinary action¹. Probationary employees are considered "at will employees and have no right to a hearing. LDSSs should work with their locality HR representative or attorney to develop a consistent process for Loudermill hearings.

NOTE: A Loudermill hearing is **NOT** the same as a grievance hearing. The Loudermill hearing is a pre-disciplinary hearing allowing an employee the opportunity to respond to pending disciplinary action before a final decision is made.

Circumstances Where Advanced Notice is Not Required

An employee may be immediately removed from the work area without advance notice under the following circumstances:

1. The employee's presence at the worksite may pose harm to the employee, other employees, clients, or third parties.
2. The employee's presence makes it impossible for the LDSS to conduct business.
3. The employee's work performance may constitute negligence regarding the LDSS' duties to the public or other employees.
4. The employee may destroy LDSS property or records.

¹ Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

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After the employee's removal from the worksite, written notice of the anticipated disciplinary action should be provided as soon as possible. **The employee should be given a reasonable opportunity to respond before any disciplinary action is finalized.**

Additional Guidelines & Recommendations

Written notification of anticipated termination is distinct from a formal written notice and should not be recorded on the LDSS Written Notice Form. It can be submitted as a letter, memorandum, or electronic communication and placed in the employee's General Employee File without requiring signatures.

If electronic communication is not possible, it is recommended that written notification of anticipated disciplinary action be sent to employees by United States Postal Service (USPS) Certified Mail.

NON-DISCIPLINARY TERMINATION

An employee may be terminated for the following non-disciplinary reasons and will not have access to the grievance procedure:

1. Failure to Return from a Leave of Absence (paid or unpaid):
 - a. The employee can no longer meet the qualifications or perform the essential functions of the position.
 - b. No reasonable accommodation can be found under the Americans with Disabilities Act (ADA) and its Amendments.
 - c. The employee has exhausted all leave options or is ineligible for additional leave and cannot return to work.

Before taking any action regarding non-disciplinary termination for leaves of absence, the LDSS should contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney.

2. Layoff due to workforce reduction. See [Section IV, "Layoff"](#) for more information.
3. Positions requiring a driver's license and safe driving history:
 - a. Loss of driver's license.
 - b. A driving record that disqualifies an employee from coverage under the LDSS's insurance policies without a special exception.
 - c. A driving record that would place the LDSS in a negligent situation if a client is transported by the employee.
4. Incarceration.
5. Loss of a required license or certification.
6. Conviction of a "barrier crime" listed in Code of Virginia [§ 63.2-1719](#), as amended.
7. Conviction of a crime meeting the determining criteria listed in Subsection C. of Code of Virginia [§ 63.2-325.1](#).
8. Founded Child or Adult Protective Services complaint.

EFFECTIVE DATE

For leaves of absence, the effective date of termination is the last date the employee was on leave. For all other non-disciplinary reasons, the effective date of termination is the last day worked.

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SECTION IV: LAYOFF

LAYOFF PROCEDURE

LDSSs follow this procedure for implementing layoff or reorganization. Refer to the [LDSS Layoff Matrix](#) for guidance. A layoff is generally considered a non-disciplinary termination. Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) with questions about the layoff procedure.

1. Freeze hiring on valid vacancies and identify valid vacancies that can be used as placement options.
2. Identify layoff unit(s) and the positions in the unit(s) that may be affected; abolish vacant positions in the identified layoff unit(s).
3. Designate any emergency, temporary, or restricted employees in the defined layoff unit for termination. The effective date of termination is the last day worked.
4. Determine which regular employee(s) will be designated for layoff by using the following factors (in order):
 - a. Review past performance documentation, active written notices, and any disciplinary history.
 - b. Seniority.Employees should be given at least **two (2) weeks' notice** that they are or may be affected by layoff.
5. Provide employees with placement options once identified.
 - a. An employee must be minimally qualified to be placed in a valid, vacant position.
 - b. Placement may result in a demotion, reduction to part-time status, or movement to restricted status.
 - c. A position that would be a promotion for an individual is not a valid placement option.
6. For those employees who have no placement options:
 - a. Determine if the employees are entitled to severance benefits.
 - b. Notify affected employees of the layoff effective date. The effective date of termination is the last day the employee(s) worked.
 - c. Provide employees with extended health plan coverage notices. See "[Extended Health Insurance](#)" for more information.
7. Notify terminated employees of recall rights. The notice should provide instructions on how to exercise recall rights and state that recall rights exist for six (6) months following the layoff.
8. Abolish former positions of employees who have been placed, laid off, or otherwise terminated.
9. Offers recall to employees in the order of their seniority, within the scope of their eligibility for recall.

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SECTION V: BENEFITS UPON SEPARATION

Employees separating from LDSS employment may be entitled to the benefits. Contact the locality or [VRS](#) with questions about retirement benefits or to initiate the retirement process.

LEAVE PAYMENTS

Non-probationary and probationary employees may be entitled to receive payments for various leave types. Contact the [VDSS Local HR Support Team](#) with questions about leave payments, or see **Chapter 4**, of the [LDSS Administrative/HR Manual](#) for more information.

PAYMENT AT SEPARATION

Annual Leave

Employees will be paid for accrued annual leave in a lump sum up to the maximum carryover amount. For unemployment compensation, the lump sum payment will be allocated as wages for the equivalent daily/weekly periods.

Sick Leave (Traditional)

Employees with at least five (5) years of continuous service with the same LDSS are entitled to a payment for accrued sick leave at termination or death. The payment is the lesser of 25% of the accrued leave or the maximum payout amount determined by the local board and approved by VDSS. For unemployment compensation, the leave payment will be allocated as wages for the equivalent daily/weekly periods. If the local board opted to pay out frozen sick leave (traditional) balances for employees opting-in to the VRS hybrid retirement plan, the payout must follow the same manner. See **Chapter 4** of the [LDSS Administrative/HR Manual](#) for more information.

Disability Leave Program (Sick & Family and Personal Leave)

Under this program, sick leave and family and personal leave credit balances are **not** paid out upon separation. No year-to-year carryover of either leave credit type is allowed.

On-Call Leave

On-call leave applies to exempt and non-exempt employees designated for adult/child protective services on-call duty. The employee will be paid a full lump sum for on-call leave that has not expired, at his/her ending regular rate of pay. For unemployment compensation, the leave payment will be allocated as wages for an equivalent number of days.

Special Duty Leave

Special duty leave applies to all employees. The employee will be paid a full lump sum for special duty leave that has not expired, at his/her ending regular rate of pay. For unemployment compensation, the leave payment will be allocated as wages for an equivalent number of days.

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Compensatory

Compensatory leave applies to all non-exempt employees. The employee will be paid in a lump sum for unused accrued compensatory leave upon separation at his/her ending regular rate of pay or average regular rate of pay over the last three (3) continuous years of employment, whichever is greater.

PAYMENT AT DEATH

Payment at death applies to annual, sick (traditional), on-call, compensatory, and special duty leave. Leave payments owed to a deceased employee are subject to certain provisions within Code of Virginia §§ 64.2-601 and 64.2-602, which govern the process by which those payments are made. Individual circumstances can vary and may require additional guidance from the locality payroll office and attorney.

RIGHT TO REPURCHASE**Annual Leave**

An employee rehired by the same LDSS within six (6) months from the date of a layoff, or an employee reinstated by a grievance panel, may have annual leave balances restored by repaying the amount of any annual leave payment received at termination.

Sick Leave (Traditional)

An employee rehired by the same LDSS within twelve (12) months from the date of a layoff, or an employee reinstated by a grievance panel, may have the sick leave balances restored by repaying the amount of any payout received at termination for accrued sick leave.

LEAVE TYPES NOT CONSIDERED SEPARATIONS

Educational leave, FMLA leave, military leave, and other forms of extended leave are not considered separations for the purposes of receiving payment for accrued annual or sick leave (traditional).

EXTENDED HEALTH INSURANCE

Employees separating from employment with the LDSS may be eligible to continue health plan coverage.¹

QUALIFYING EVENTS

The following events qualify the employee, spouse, former spouse, or dependents for continuation of health plan coverage:

Employee

When health plan coverage is lost due to:

¹ The [Consolidated Omnibus Budget Reconciliation Act \(COBRA\)](#) allows employees who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances (i.e., voluntary or involuntary job loss, reduction in hours worked, transition between jobs, death, divorce, and other life events).

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1. A reduction in work hours.
2. Leave without pay.
3. Loss of employment for any reason other than gross misconduct.

Employee's Spouse

When health plan coverage is lost due to:

1. The death of the employee.
2. Reduction in the employee's work hours.
3. Loss of employment for any reason other than gross misconduct.
4. The employee becoming eligible for Medicare benefits.
5. Divorce or legal separation.

Dependent of Employee

When health plan coverage is lost due to:

1. Death of the employee.
2. Reduction in the employee's work hours.
3. Loss of employment for reasons other than gross misconduct.
4. Employee's eligibility for Medicare.
5. Parents' divorce or legal separation.
6. Loss of eligibility for dependent status.

LDSS HEALTH PLAN ADMINISTRATOR

The locality acts as the health plan administrator. The employee should contact the LDSS health plan administrator for:

1. Questions about extended health plan coverage.
2. Providing notices of qualifying events, change in status, or change in address.

QUALIFYING EVENTS NOTIFICATION

An employee or the qualified beneficiaries must notify the LDSS of a qualifying event within sixty (60) days. Upon receipt of notice, the LDSS will provide an Election of Extended Health Plan Coverage Form.¹

CONTINUED PLAN PARTICIPATION

Election

Employees and other qualified beneficiaries can independently make an extended coverage election to continue health benefit coverage. A covered employee or spouse may elect on behalf of others, and a parent or guardian may elect on behalf of a minor child. Each can also waive extended coverage independently.

¹ This form cannot be hyperlinked because VDSS does not maintain it. Please contact the LDSS health plan administrator to access the form.

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Time Period to Make an Election

An employee or qualified beneficiary has sixty (60) days from receipt of the Election Notice or the date of loss of coverage, whichever is later, to make an election. If elected during this period, coverage dates to the qualifying event without a gap.

Revocation of Waiver of Coverage

If extended health plan coverage is waived, the waiver may be revoked at any time during the sixty (60) day election period. If revoked, continuation coverage begins on the date the waiver is revoked, resulting in a gap in coverage.

Length in Continuation Coverage

Continuation coverage lasts for eighteen (18) months, except for employees entering military duty who can elect up to twenty-four (24) months. If a qualified beneficiary is deemed disabled by the Social Security Administration (SSA) during the initial 18 months, coverage can extend for an additional eleven (11) months upon timely notice of disability within sixty (60) days.

Second Qualifying Event

During the continuation period, a second qualifying event permits an additional eighteen (18) months of coverage, totaling thirty-six (36) months. Notification of the second qualifying event must be provided to LDSS within sixty (60) days.

Date Coverage Begins

Coverage begins on the date coverage would have been lost, provided election and timely premium payments are made. For example, if a qualifying event occurs on August 1 and coverage is elected on September 19, medical expenses incurred between August 1 and September 19 are covered upon full payment of premiums.

Failure to Elect Continuation Coverage

Failure to elect continuation coverage results in coverage loss. Joining another group health plan within sixty-three (63) days avoids pre-existing condition exclusions under the new plan.

PREMIUM PAYMENTS**First Payment**

Continuation coverage requires the first payment within forty-five (45) days of election. This payment covers premiums from the qualifying event date to the payment date.

Subsequent Payments

Monthly payments must be timely to maintain coverage. A thirty (30) day grace period allows for reinstatement if a late payment is made within this period.

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Amounts of Payment

The employee or qualified beneficiary pays 100% of the premium. The LDSS may charge a 2% administrative fee, increasing payments to 102%. After eighteen (18) months, if disabled, premiums may rise to 150% of the base premium.²

Termination for Failure to Pay Premiums

Failure to pay premiums on time may lead to termination of continuation coverage.

END OF COVERAGE**End of Maximum Coverage Period**

Coverage concludes after the maximum period: Eighteen (18) months in standard cases, twenty-nine (29) months if disabled, or thirty-six (36) months with a second qualifying event. Coverage may end earlier if premiums are not paid, LDSS ceases group health plans, Medicare coverage begins, or other employer group health plan coverage commences.

Exceptions: Coverage cannot be terminated by the LDSS if (1) the coverage in another group health plan was obtained prior to the election, or (2) if the coverage in another plan has pre-existing exclusions or limitations or is not as comprehensive as the extended health coverage.

OTHER PROVISIONS**Open Enrollment**

During open enrollment, eligible beneficiaries can enroll in the health plan under regular terms. They do not have continuation coverage rights, and their participation depends on the qualified beneficiary's eligibility and inclusion in the plan.

Appeals on Denial of Coverage

If a claim for plan benefits is denied, the covered individual will receive a written notice explaining the reason for the denial within ninety (90) days of the claim submission. The notice will detail the denial reasons, any required additional information, and appeal procedures. The covered individual has sixty (60) days to appeal, with a decision provided within sixty (60) days of the appeal submission. If the claim remains denied, the covered individual can contact the [State Corporation Commission](#), Insurance Division, in Richmond for information on further appeal options.

Family and Medical Leave

During Family and Medical Leave, health plan coverage continues under the same payment terms as when the employee was working. This coverage does not qualify as extended health plan coverage. While Family and Medical Leave itself does not trigger extended health plan coverage, if the employee informs the employer of his/her decision not to return at the leave's end, extended health plan coverage rights begin from that point.

² These amounts are established by COBRA guidelines.

Health Insurance Portability and Accountability Act (HIPAA) Benefits)

1. **Conversion Rights:** Some plans allow covered individuals to convert to an individual policy after extended health plan coverage ends. If the LDSS's plan permits this option, notice will be given at least 180 days before coverage ends. Individual policy premiums may be higher and offer fewer benefits. Choosing an individual policy prevents imposition of pre-existing conditions. However, this option is unavailable if coverage is terminated before the coverage period ends.
2. **Enrollment in Spouse's Plan:** Upon exhausting extended health plan coverage, HIPAA grants qualified beneficiaries the right to join a spouse's plan for which they are eligible. Enrollment can occur without waiting for open enrollment but must be requested within thirty (30) days of extended health plan coverage ending.
3. **Certification of Credible Coverage:** Upon health plan participation ending (e.g., termination or extended health plan coverage conclusion), each participant receives a certificate of creditable coverage. This document allows enrollment in another group health plan within sixty-three (63) days without pre-existing condition exclusions or limitations.

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PART IV: GRIEVANCE PROCEDURE

POLICY STATEMENT

In compliance with [§§ 63.2-217](#), [63.2-219](#), and [15.2-1507](#) of the Code of Virginia, an LDSS provides its employees access to a grievance procedure to address unfair policy application, discriminatory practices, illegal employment actions, disciplinary measures, and retaliation. Part IV of this policy is based on [§§ 22VAC40-675-30](#), [22VAC40-675-140](#), [22VAC40-675-160](#), [22VAC40-675-170](#), [22VAC40-675-190](#), and [22VAC40-675-200](#) of the Administrative Code of Virginia, with relevant sections of the Code of Virginia referenced in applicable policy area.

SCOPE

This policy applies to non-probationary, regular full- and part-time employees, including local directors and those employees serving a conditional status period, of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS.

Additional Information:

Per [§ 22VAC40-675-50](#) of the Administrative Code of Virginia, in local jurisdictions where there is a grievance procedure policy that applies, the local department of social services may deviate to the locality policy, provided the policy applies uniformly *and*, per [§ 63.2-219](#) of the Code of Virginia, includes the local director. The deviation must be in substantial conformity with this policy and be approved by [VDSS HR Policy Team](#) (hr.employeerelations@dss.virginia.gov).

Questions about the grievance procedure may be directed to the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney.

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SECTION I: GRIEVABILITY & OTHER MEANS OF CONFLICT RESOLUTION

ACCESS

Employees generally have access to the grievance procedure if initiated within thirty (30) calendar days of the event or action prompting the grievance, as stipulated in [§ 63.2-219](#) of the Code of Virginia. The local director is included in this access provision.

Exception to Access:

1. Probationary employees.
2. Employees opting for another state procedure.
3. Voluntarily resigned employees.
4. Term-hired employees.
5. Exempted employees under [§ 15.2-1507](#) of the Code of Virginia.
6. Employees in restricted, seasonal, emergency, or temporary positions.

ACCESS FOR SEPARATED EMPLOYEES

Separated employees lose access to the grievance procedure upon separation, except for cases involving termination due to formal discipline, unsatisfactory performance, or involuntary resignation. Grievances initiated before termination may continue at the employee's discretion. A grievance initiated after termination must be initiated within thirty (30) calendar days of the dismissal date.

RIGHT TO APPEAL

Employees denied access to the grievance procedure can appeal to the circuit court with jurisdiction in their employment locality for a hearing on access eligibility.

RETALIATION PROHIBITED

Employees using or participating in the grievance procedure are protected from retaliation. Any confirmed retaliation will result in disciplinary action, up to and including termination. The LDSS must contact [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) if retaliation is suspected or occurs.

GRIEVABILITY

GRIEVABLE ISSUES

Grievances may involve:

1. Disciplinary actions (dismissals, demotions, suspensions). Dismissals are grievable if they result from formal disciplinary processes or are due to unsatisfactory job performance.
2. Unfair application of personnel policies, procedures, rules, and regulations.
3. Discrimination based on protected characteristics.
4. Arbitrary performance evaluations.
5. Retaliation for lawful actions or reporting violations.
6. Employees reinstated because of a grievance determination within the past six (6) months who are subject to adverse actions such as termination, layoff, demotion, suspension due to lack of work, reduction in workforce, or job abolition without valid business reasons and without advance communication.

NONGRIEVABLE ISSUES

LDSSs have the right to manage the affairs and operations of government. Actions exclusively managed by LDSS include:

1. Establishment and revision of wages or salaries, position classification, or general benefits.
2. Work activity accepted by the employee as a condition of employment or reasonably be expected to be a part of the job.
3. Contents of ordinances, statutes, established personnel policies, procedures, rules, and regulations.
4. Failure to promote, except where the employee can show that established promotional policies or procedures were not followed or applied fairly.
5. Work methods and personnel assignments.
6. Relief of employees from duties in emergencies.
7. Hiring, promotion, transfer, assignment, and retention of employees within the local government.

CONCILIATION OR MEDIATION

Most employee concerns or complaints can be resolved informally through communication between the employee and supervisor. There are two (2) options:

1. Conciliation allows an employee and supervisor to reach a mutually acceptable resolution.
2. Mediation provides an opportunity to seek resolution through discussions facilitated by a third party.
3. Employees are encouraged to first bring their complaints to their immediate supervisor to seek resolution. Mediation may serve as an alternative to pursuing a complaint through the grievance procedure. If an employee participates in mediation and wishes to retain the right to file a grievance,

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they must reach an agreement with the LDSS allowing an extension of the grievance filing period. To ensure clarity, this agreement should be documented in writing.

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SECTION II: MANAGEMENT RESOLUTION STEPS

If employee complaints cannot be resolved through conciliation or mediation, the grievance procedure may be initiated. There are three (3) management resolution steps: the first, second, and third resolution steps. These steps generally follow a sequential order; however, refer to [“Exceptions to Sequence of Resolution Steps”](#) for circumstances where this may not apply.

TIMEFRAMES

The grievance procedure specifies actions that must be taken within specific periods of time. For clarification:

1. "Workdays" refers to days when LDSS is open for business; official office closures and weekends are not considered workdays.
2. If the party required to act is on a full day(s) of authorized leave, those day(s) will not be counted as workdays.
3. If any action cannot be completed within the provided time period, either the employee or LDSS may request an extension. Any granted extension should be documented in writing to formalize the agreement.

FIRST RESOLUTION STEP

INFORMAL OR ORAL INITIATION OF GRIEVANCE

An informal grievance can be addressed verbally. An employee with a complaint may initiate a grievance by informally discussing it directly with his/her immediate supervisor promptly. The verbal grievance should include the date, the facts supporting the complaint, and the requested relief. Informal attempts to resolve the complaint do not extend the thirty (30) day limit for initiating a grievance.

SUPERVISOR'S OBLIGATION

Upon request, supervisors must provide employees with the [LDSS Local Agency Employee Grievance Form](#) and a copy of the grievance procedure.

FORMAL/WRITTEN INITIATION OF A GRIEVANCE

An employee must formally initiate a grievance in writing with his/her immediate supervisor within thirty (30) calendar days of event or action which prompting the grievance. The formal grievance must be submitted using the LDSS Local Agency Employee Grievance Form. It may be hand-delivered, faxed, e-mailed, or mailed to the immediate supervisor.

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Fact-Finding Meeting

Within five (5) workdays of receiving a written grievance, the supervisor must meet with the employee for fact-finding purposes. Only the employee, supervisor, and relevant witnesses may attend, with witnesses present solely to provide testimony.

Written Response

The supervisor must provide a written response to the employee, attached to the [LDSS Local Agency Employee Grievance Form](#), within five (5) workdays after the fact-finding meeting.

Witness Involvement

Witnesses do not participate in first step meetings.

SECOND RESOLUTION STEP

ADVANCEMENT PROCESS

If the supervisor's reply is unacceptable to the employee, and the employee wishes to continue the grievance, the employee may advance it to the second resolution step by documenting the request on the original LDSS Local Agency Employee Grievance Form and sending it to the local director. The request must be received by the local director within five (5) workdays of the employee receiving the written first step response.

Fact-Finding Meeting

The local board or the personnel committee shall meet with the employee within five (5) workdays of receipt of the grievance record for the purpose of fact-finding.

Written Response

The local board or personnel committee must provide a written response to the employee within five (5) workdays following the third step meeting. The response must be provided on or as an attachment to the LDSS Local Agency Employee Grievance Form.

Legal Counsel

If the employee has or will retain legal counsel, the LDSS also has the option of doing so. The employee must advise the local board or personnel committee at the time the grievance is advanced to the third step if legal counsel has or will be retained. Legal counsel's role is to assist, not to actively advocate or argue on behalf of the employee, the LDSS, nor to examine witnesses.

Witness Involvement

Witnesses may be present at the third step meeting only while providing testimony. No other parties outside of the employee, the local board or personnel committee members, appropriate witnesses, and legal counsel are permitted to attend the meeting.

EXCEPTIONS TO SEQUENCE OF RESOLUTION STEPS

Generally, the three (3) management resolution steps proceed in order. However, in the following circumstances, not all steps may apply.

GRIEVANCE INITIATED BY THE LOCAL DIRECTOR

The first and second steps of the grievance procedure will be combined into one step which starts with the local board.

1. After the local director submits a written grievance to the local board, the board provides a written response.
2. If the local director is not satisfied with the response, the director may request the third step fact-finding meeting with the local board.
3. If the local director is still not satisfied, the director may appeal to the next management level for an administrative hearing.
4. When a grievance is initiated by the local director, the director's responsibilities in this procedure are handled by the local board.

GRIEVANCES INVOLVING DISCRIMINATION OR RETALIATION

If the grievance involves discrimination or retaliation by the immediate supervisor, the employee may initiate the grievance with the next management level. If the grievance is initiated with the local director, the first and second steps of the procedure are combined, and the informal and written initiations of the grievance are with the local director.

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SECTION III: QUALIFICATION FOR ADMINISTRATIVE HEARING

REQUEST FOR QUALIFICATION

An employee may request qualification for an administrative hearing if the local board's response is unacceptable. This request must be documented on the original [LDSS Local Agency Employee Grievance Form](#) and received by the local director within five (5) workdays after the employee receives the written third-step response.

QUALIFYING ACTIONS

Only grievances challenging certain actions qualify for a hearing.

AUTOMATIC QUALIFICATION

1. Formal discipline (a written notice)
2. Dismissal for unsatisfactory performance

ACTIONS THAT MAY QUALIFY

The grievance should qualify for a hearing if its claims and the facts, taken as a whole, raise a sufficient question as to whether an adverse employment action has occurred due to:

1. Unfair application of personnel policies, procedures, rules, and regulations.
2. Discrimination based on any protected characteristic.
3. Arbitrary performance evaluation.
4. Retaliation for lawful actions or reporting violations.
5. Informal discipline, such as terminations, transfers, assignments, demotions, and suspensions that are not accompanied by formal discipline (no written notice) but taken primarily for disciplinary reasons.
6. Reinstatement because of a grievance determination within the past six (6) months where adverse actions such as termination, layoff, demotion, suspension due to lack of work, reduction in workforce, or job abolition occur without valid business reasons and without advance communication.

ACTIONS THAT DO NOT QUALIFY

Claims that relate solely to the following issues do not qualify for a hearing:

1. Establishment and revision of wages or salaries, position classification or general benefits.

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2. Work activity accepted by the employee as a condition of employment or reasonably be expected to be a part of the job.
3. Contents of ordinances, statutes, established personnel policies, procedures, rules, and regulations.
4. Failure to promote, except where the employee can show that established promotional policies or procedures were not followed or applied fairly.
5. Work methods and personnel assignments.
6. Relief of employees from duties in emergencies.
7. Hiring, promotion, transfer, assignment, and retention of employees within the local government.

QUALIFICATION PROCESS

QUALIFICATION DETERMINATION

1. Within five (5) workdays of receiving the qualification request, the local director, on behalf of the local board, must determine if the grievance qualifies for an administrative hearing. The decision will be provided in writing, and the original grievance record will be returned to the employee.
2. If the local director determines the grievance does not qualify for an administrative hearing, the employee may appeal the decision to the circuit court with jurisdiction over the locality where the employee is or was employed.

APPEAL PROCESS

1. An appeal must be filed by submitting a notice of appeal to the local board within five (5) workdays of receiving the qualification decision. The appeal should be documented using the original [LDSS Local Agency Employee Grievance Form](#).
2. Within ten (10) *calendar* days from the date of the qualification appeal, the local director, acting on behalf of the local board, shall transmit the following to the clerk of the circuit court for that jurisdiction:
 - a. A copy of the complete grievance record.
 - b. The qualification decision made by the local director.
 - c. The notice of appeal.
 - d. Any accompanying exhibits.
3. A list of evidence provided to the circuit court must also be provided to the employee.
4. A scheduling request for the appeal hearing must be submitted to the clerk of the circuit court. The circuit court is required to schedule the hearing within thirty (30) days of receiving the grievance record.
5. The circuit court will issue a final decision within fifteen (15) days after the conclusion of the appeal hearing. This decision by the circuit court cannot be further appealed.

SECTION IV: ADMINISTRATIVE HEARING

Grievances qualifying for an administrative hearing proceed before an administrative hearing officer or a panel.

USE OF AN ADMINISTRATIVE HEARING OFFICER

In cases involving a termination or retaliation, the local board may opt to utilize an administrative hearing officer. If chosen, the hearing officer shall be appointed from a list maintained by the Executive Secretary of the Virginia Supreme Court, with costs borne by the LDSS.

USE OF A PANEL

PANEL SELECTION

For all hearings, excluding those with an appointed hearing officer, a panel shall be formed, comprising three members:

1. One member appointed by the employee.
2. One member appointed by the LDSS.
3. A third member selected by mutual agreement of the first two panel members or, in case of disagreement, appointed by the chief judge of the circuit court in the grievance's jurisdiction.

SELECTION PROCESS

1. Both parties must select their panel members within five (5) workdays upon notification that the grievance qualifies for an administrative hearing.
2. Each party shall promptly provide the other with the contact information of all members of his/her panel, to include names, addresses, telephone numbers, and email addresses.
3. The employee's and the LDSS's panel members shall discuss the selection of a third member. If members cannot agree on the third member within five (5) workdays, they must inform the local board chairman and the employee.
4. The local board chairman will then request the chief judge of the circuit court to appoint the third panel member.
5. The third panel member serves as the chairperson.
6. Panels shall be impartial, excluding individuals directly involved in the grievance or related dispute, including supervisors, managers, household members, relatives, spouses, attorneys, and their associates.
7. Panel selection should ideally conclude by the tenth workday following qualification for the hearing, though extensions may apply if agreement on the third member is delayed.

COMMUNICATION WITH PANEL MEMBERS OR THE ADMINISTRATIVE HEARING OFFICER

Parties should refrain from discussing the grievance or its underlying issues with any panel member or the administrative hearing officer before the hearing. All communications requiring the attention of the panel or administrative hearing officer must be in writing, with copies provided to all parties.

HEARING DATE

The full panel or administrative hearing officer will schedule the date, time, and venue for the administrative hearing. The hearing should occur within ten (10) workdays following the selection of the full panel or appointment of the administrative hearing officer. The panel chairperson or administrative hearing officer will promptly notify both the employee and the LDSS of the hearing date. The administrative hearing will be conducted in the locality where the employee is/was employed, unless unanimously decided otherwise by the panel or administrative hearing officer that another location is appropriate.

Hereafter, both the panel and the administrative hearing officer will be referred to as the “presiding party,” except where specific action by the panel chairperson is required.

CASE PRESENTATION

The employee and the LDSS may have legal counsel or other representatives present at the administrative hearing. These representatives may examine, cross-examine, question witnesses, or present evidence before the presiding party.

Legal representation is optional. If either the employee or the LDSS is represented by legal counsel, that representative may not testify or be called as a witness for either party.

ADMINISTRATIVE HEARING PROCEDURE

1. The presiding party sets conduct rules for attendees with and without direct interest.
2. At the start of the hearing, the presiding party may ask for clarification on the issues.
3. In disciplinary cases, LDSS presents first; otherwise, the employee goes first. The presiding party decides the order, ensuring both sides have a fair chance to present evidence.
4. The employee, local director, or their representatives present claims, evidence, call witnesses, and allow questioning.
5. Exhibits accepted as evidence are marked and included in the record.
6. Parties provide necessary evidence; the presiding party judges its relevance. All evidence is presented in their presence.

HEARING DECISION

The presiding party submits a written decision within thirty (30) calendar days. Copies are sent to the employee and the LDSS Board. If a panel presides over the hearing, the decision is based on a majority vote and documented. The decision is final if it complies with the law and policy.

APPEAL PROCESS

1. A party can appeal an administrative hearing decision if they believe the relief granted doesn't align with law or written policy. The appeal must be in writing to the local board and received within five (5) workdays of receiving the decision.
2. Within five (5) workdays of receiving the decision, a written request to reconsider the panel decision can be submitted to the panel chairperson or the administrative hearing officer. The panel or officer may choose to review the decision or reopen the hearing for valid reasons by majority vote.
3. Appeals are decided by the local board within ten (10) workdays of receipt, except when the board has personal involvement in the grievance. When this occurs, the decision is made by the Commonwealth's Attorney.
4. The local board ensures implementation of the administrative hearing decision.
5. Either party may petition the circuit court in the jurisdiction where the grievant works for an order to enforce the panel or hearing officer's decision.

COMPLIANCE

1. All parties must comply with procedural requirements of the grievance procedure, including the administrative hearing. Failure to comply without just cause may result in a decision favoring the other party on any grievable issue if noncompliance persists beyond five (5) workdays after written notification of the violation.
2. Grievants notify the local director of compliance issues unless the local director is the grievant, in which case the local board assumes responsibility.
3. The local director determines compliance issues unless they are the grievant, in which case the local board takes responsibility.
4. Grievants can challenge compliance determinations by filing a petition with the circuit court in their jurisdiction within thirty (30) calendar days of the compliance decision.
5. The Virginia Department of Social Services has no role in ensuring LDSS compliance with grievance procedure steps.

APPENDIX

Chapter 7: Supplementary Information

APPENDIX 7.1: REASONABLE SUSPICION CHECKLIST

LDSS REASONABLE SUSPICION CHECKLIST

This form on the following page should be used when an employee is suspected of being under the influence of alcohol or another controlled substance during work hours. At least two (2) people should complete the checklist during separate observations while following the guidance in the [Alcohol & Drugs Policy](#). Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) before any disciplinary decisions are made.

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REASONABLE SUSPICION CHECKLIST

The purpose of this form is to record behavioral and physical indicators of impairment when an employee suspected of being under the influence of alcohol or a controlled substance. Two (2) separate observation forms should be completed, by supervisors or managers of the LDSS. It is recommended that the LDSS review the documentation with the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) before any disciplinary decisions are made. **Chapter 7** of the [LDSS Administrative/HR Manual](#) contains additional guidance regarding the procedures for reasonable suspicion testing.

Observer: _____ Agency: _____

Date: _____ Time: _____

Employee Name: _____ Job Title: _____

Odor:	☐	Smell of Alcohol	☐	Smell of Marijuana	☐	Body Odor	☐	Smell of Urine	☐	N/A
Face:	☐	Flushed	☐	Sweating	☐	Confused Look	☐	Blank Stare	☐	N/A
Speech:	☐	Slurred	☐	Slow	☐	Distracted	☐	Incoherent	☐	N/A
Emotions:	☐	Argumentative	☐	Agitated	☐	Irritable	☐	Drowsy	☐	N/A
Actions:	☐	Yawning	☐	Twitching	☐	Slumping	☐	N/A		
Inactions:	☐	Sleeping	☐	Unconscious	☐	Unresponsive to Questions	☐	N/A		
Movement:	☐	Unsteady	☐	Fidgety	☐	Dizzy	☐	N/A		
Eyes:	☐	Watery	☐	Involuntary Eye Movements	☐	N/A				
Pupils:	☐	Constricted	☐	Dilated	☐	N/A				

Additional Observations:

Signature

Date

GLOSSARY

PART I: STANDARDS OF CONDUCT

1. Alcohol: Any product defined as such in the Alcohol Beverage Control Act, [§ 4.1-100](#) of the Code of Virginia, as amended.
2. Anything of Value (also "Item of Value"): Any item gift, gratuity, service or other item valued above \$30.
3. Appeal: A challenge to a previous agency determination (e.g., drug test result, grievance procedure, etc.), or an external legal determination (e.g., criminal/civil court ruling).
4. Attendance: The presence of an employee at a designated worksite during the required hours.
5. Benefit: Relating specifically to conflicts of interest; means a gain, advantage, or anything regarded as a gain or advantage. In this context, a benefit may also be referred to as 'special consideration.'
6. Bullying: Repeated, unreasonable actions intended to intimidate, degrade, or humiliate a person or group. Any confirmed complaint will lead to disciplinary action, which may include termination. Bullying can manifest in various forms, such as physical, verbal, social, or through cyberbullying.
7. Business Interest: A business gain or advantage, or anything regarded by the beneficiary as a business gain or advantage, including a business benefit to any other person or entity in whose welfare he is interested.
8. Chain of Custody: Chronological documentation that records the sequence of custody, control, transfer, analysis, and disposition of materials (refers to test sample in relation to drug testing).
9. Confidentiality: A set of rules limiting access or places restrictions on certain types of information.
10. Conflict of Interest: Any conduct prohibited under the Code of Virginia as a conflict of interest ([Chapter 31, Conflicts of Interest Act](#)) also, any conduct or activity that places an employee's personal interest, gain or benefit above the business, interest or operations of the local department.
11. Criminal Charge: A formal accusation made by law enforcement or another governmental authority asserting that person has committed a crime.
12. Criminal Drug Law/Statute: Any criminal law governing the manufacture, distribution, dispensation, use, or possession of any controlled drug.
13. Employee Performance Plan and Evaluation (EPPE): An LDSS-specific tool used for documenting and communicating the employee's annual performance plan, development plan, and evaluation. Parts I, II, III, and IV are drafted by the supervisor with input from the employee and reviewed together at the start of the evaluation cycle. Parts V, VI, VII, and VIII are completed by the supervisor and reviewed with the employee at the conclusion of the evaluation cycle.
14. Fitness for Duty: Being physically or mentally capable of performing one's job duties.
15. Gift or Gratuity: Interchangeably used, "gift" refers to any favor, discount, entertainment, hospitality, loan, forbearance, or other item of monetary value. This definition encompasses services and includes gifts of transportation, local travel, lodging, and meals, whether provided in-kind, by ticket purchase, pre-payment, or reimbursement after expenses are incurred. The term "gift" excludes offers of tickets,

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admissions, or passes unless they are used. It also excludes honorary degrees and presents from relatives. In this context, "relative" pertains to the donee's spouse, child, uncle, aunt, niece, nephew, fiancé(e), parent, grandparent, grandchild, sibling, or sibling's spouse, or the spouse of any of these relatives.

16. Harassment: Unwelcome conduct based on a protected characteristic (such as race, sex, religion, disability, etc.) that creates a hostile or offensive work environment or results in adverse employment actions. This is typically prohibited under federal, state, and local laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA).
17. Hatch Act: A federal law passed in 1939, limits certain political activities of federal employees, as well as some state, D.C., and local government employees who work in connection with federally funded programs.
18. Honorarium: Any monetary gift for an appearance, speech, or article written.
19. Illegal Drug: Includes any substance defined as such in the Drug Control Act, [Chapter 34, Title 54.1 of the Code of Virginia](#), as amended, and/or schedules I through V of section 202 of the Controlled Substances Act ([21 U.S.C. 812](#)) of the US Code, and whose manufacture, distribution, dispensation, use, or possession is controlled by law.
20. Investigation Finding: The final result of a workplace investigation. Investigation findings may be founded, unfounded, or inconclusive.
21. Investigator: A person responsible for carrying out a formal investigation or inquiry.
22. Nominal Value: Any gift, gratuity, or service valued at \$30 or less.
23. Outside Employment: Any compensated activity in which an employee engages when not engaged in employment activity at or on behalf of the local department.
24. Personal Interest: Means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Immediate family refers to a spouse and household dependents. Such interest shall exist by reason of:
 - a. Ownership exceeding three percent equity in a business.
 - b. Annual income over \$10,000 from property or business ownership.
 - c. Compensation, benefits, or property use worth over \$10,000 annually from a business or government agency.
 - d. Ownership of property exceeding \$10,000 in value, excluding business ownership or income.
 - e. Personal liability exceeding three percent of a business's asset value.
 - f. Option for property or business ownership under points a or d.
25. Professional Standards: Standards in this policy section that pertain to the conduct of local department employees in their work on behalf of the local department.
26. Random Testing: Unannounced drug or alcohol testing of employees in safety-sensitive positions where employees in these positions have an equal probability of being selected.
27. Reasonable Suspicion Testing: Requiring the drug or alcohol testing of an employee when there is an articulable belief based on observable facts that the employee may be acting under the influence of drugs or alcohol while on the job.
28. Retaliation: An overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment toward an employee bringing forth a workplace complaint in good faith.

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29. Separation: A broad classification of actions that end employment. A separation may be either voluntary or involuntary. Types include but are not limited to resignation, job abandonment, death, termination (disciplinary and non-disciplinary), and layoff.
30. Special Consideration: Relating specifically to conflicts of interest; means a gain, advantage, or anything regarded as a gain or advantage. In this context, a special consideration may also be referred to as 'benefit.'
31. Split-Specimen Testing: Refers to a urine sample collection method as an option for an employee drug testing protocol. In this method, urine is divided or 'split' into two separate, sealed samples and both samples are sent to the testing lab. Only one of the samples is tested. If the first tested sample reveals a positive result, the employee may elect to have the second sample tested to either confirm or reject the findings of the first test.
32. Stipend: Any monetary amount provided to cover expenses.
33. Third Party: Individuals who are not LDSS employees, such as employees of other businesses, relatives, acquaintances, clients, or strangers.
34. Token Gift: Any gift or item valued at less than \$30.
35. Weapon: Any device, object, instrument, or material that is designed for or used for the purpose of inflicting bodily harm or causing physical damage.
36. Workplace: Any location where an employee performs work-related activities. This includes, but is not limited to, the local department's buildings and the surrounding perimeters (including parking lots), field locations, alternative work locations, and travel to and from work assignments.
37. Workplace Investigation: The process of engaging a neutral, objective party to gather facts and collect evidence in relation to an allegation of or incident involving workplace misconduct.
38. Workplace Violence: Any physical assault, threatening behavior, or verbal abuse occurring in the workplace by employees or third parties. It includes, but is not limited to, beating, stabbing, suicide, shooting, rape, attempted suicide, acts of intimidation, stalking, and harassment of any nature. Oral and written statements, gestures, or expressions that communicate to a reasonable person a direct or indirect threat of physical harm or psychological harm are included in this definition.

PART II: DISCIPLINARY ACTION

1. Administrative Leave: Administrative leave is leave with or without pay granted by the LDSS for an employee to be away from the worksite performing non-work activities. Administrative leave is not an entitlement, and its use is purely discretionary on the part of the LDSS.
2. Aggravating Factor: Factors that compel and increase in the severity of disciplinary action. When taken into consideration with misconduct, aggravating factors justify issuing a higher level of discipline (e.g., willful deliberate misconduct or conduct that caused severe harm to other employees or extensive property damage).
3. Corrective Action: Action taken to eliminate the causes undesirable behavior or misconduct in the workplace to prevent recurrence.
4. Counseling: Consists of a private discussion between the employee and the supervisor to address actions constituting an offense, discussing improvements needed in performance or behavior.

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Counseling is appropriate for conduct or performance issues resulting in minimal impact to business operations or that involve minor infractions of policies or laws and may be either verbal or written.

5. Disciplinary Action: Action taken when counseling has failed to correct an employee's misconduct or performance problems, or when an employee commits a more serious offense.
6. Mitigating Factor: Compel a reduction in the severity of disciplinary action (e.g., considering an employee's long service record or prior satisfactory work performance).
7. Notice of Anticipated Disciplinary Action: Verbal or written notification of offense(s) and an explanation of the LDSS's basis for the anticipated disciplinary action provided to an LDSS employee prior to the action occurring.
8. Offense Groups: Refers to disciplinary action. Categories indicating the severity of an employee's performance problem or misconduct. There are three groups: Group I, Group II, and Group III; Group I being the least severe and Group III being the most severe.
9. Reinstatement: Refers to disciplinary suspension. An act or instance of being restored to a former position.
10. Suspension: A set period, consisting of no more than thirty (30) days, where an employee is relieved from his/her work duties and prevented from entering the workplace or accessing workplace systems; this period may be either paid or unpaid.
11. Written Notice: Notice required to be issued when taking disciplinary action that identifies the offense, the disciplinary action to be taken, and the circumstances considered in the determination of disciplinary action. The LDSS must place the written notice on the [LDSS Written Notice Form](#).

PART III: SEPARATION FROM EMPLOYMENT

1. Accrued Leave: Annual, sick, compensatory, or overtime leave that an employee has accumulated per pay period based on his/her years of service.
2. Advance Notice: Applies to resignation; the employee provides the employer with oral or written notification of the intent to resign from a position prior to the date of resignation.
3. Barrier Crime: A criminal conviction that legally disqualifies a person who has been convicted to work in certain jobs. For the purposes of LDSS Administrative/HR Manual, this refers to the convictions outlined in [§ 19.2-392.02](#). "National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children or the elderly or disabled."
4. Conditional Status Period: A twelve (12) month period of evaluation to assess the performance of employees who have successfully completed a 12-month probationary period in a permanent position and have been promoted, demoted, redefined, or otherwise had a change in classification. These employees retain grievance rights.
5. Consolidated Omnibus Budget Reconciliation Act (COBRA): Mandates that employees and their families who lose their health benefits have the right to elect to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances (i.e., voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events).
6. Death: A type of voluntary separation where the employee's death is the reason for job loss.

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7. Demotion in lieu of Layoff: When an employee is moved to a position in a lower band or a lower tier in the same band within the LDSS due to a reduction in force.
8. Disciplinary Termination: An involuntary loss of employment due to violation(s) of the [Standards of Conduct](#), workplace rules, or federal, state, or local law; or sustained, substandard work performance.
9. Effective Date: The date when personnel actions occur or take effect.
10. Election: Process where employees choose specific health benefits for themselves and any dependents. For the purposes of this chapter, this refers to extended health insurance elections upon separation of employment.
11. Emergency Employee: Person employed with the understanding that the employment is time-limited to fill an immediate need of the LDSS. Emergency employees may work no more than the full-time-equivalent of 180 workdays (consecutive or non-consecutive) in a twelve-month period. An emergency employee does not serve a 12-month probationary period and does not have access to the grievance procedure.
12. Extended Health Insurance: Health plan coverage that may be available to employees who have separated from employment with the agency.
13. Former Position: Position held by the employee just before layoff.
14. Gross Misconduct: Egregious or willful misconduct in disregard of the LDSS' interest. Examples are violence in the workplace and mishandling of LDSS funds.
15. Involuntary Separation: A type of separation from employment that occurs either because of a disciplinary action or a [non-disciplinary](#) reason. For the purposes of the LDSS Administrative/HR Manual, 'involuntary separation' is referred to as 'termination.'
16. Job Abandonment: A type of voluntary separation that occurs when an employee does not report to work as scheduled or intend to return; however, the employee does not notify the LDSS of the intention to quit. Job abandonment is often referred to as "no-call/no-show."
17. Layoff: The temporary suspension or permanent termination of an employee or a group of employees for business a reason, such a reduction or reorganization of the workforce.
18. Layoff Unit: A group of employees designated for application of layoff that may be defined by various combinations of organizational structure, job classification, program area, and status of position funding.
19. LDSS Health Plan Administrator: Point of contact for LDSS employees who have questions regarding the health plan. Employee benefits are not administered by VDSS; this contact will be an employee of the locality.
20. Loudermill Hearing: A hearing afforded to non-probationary employees who face significant disciplinary action in the form of suspension, demotion, termination, etc. Prior to taking any disciplinary action, LDSSs are required to provide the employee with written notice of the pending disciplinary action and the evidence supporting the action. Additionally, LDSSs must provide a reasonable timeframe for the employee to respond to either accept or deny the opportunity for a hearing to present his/her defense.
21. Minimally Qualified: Possession of the necessary knowledge, skills, and abilities (KSAs) and other bona fide job requirements such that the employee can successfully perform the job duties of the position.
22. Non-Probationary Employee: Employees who have completed the required twelve (12) month probationary period.

23. Open Enrollment: A period when employees are free to enroll in a health insurance plan or other benefit program that is ordinarily subject to restrictions. Also, employees who are already enrolled are free to make any changes to their current elections for reasons that do not meet the criteria for a qualified event.
24. Placement Option: A position available as an alternative to layoff.
25. Qualified Beneficiary Dependent: A dependent as defined under the policy who was participating in the health plan or other medical benefit on the day prior to loss of coverage due to a qualifying event. In addition, any child born to or placed for adoption with a covered employee during the period of extended health plan coverage is considered a qualified beneficiary.
26. Qualified Beneficiary Employee: An employee who loses health plan coverage when a qualifying event occurs such as reduction of work hours, placement on leave without pay, or employment terminates for any reason other than gross misconduct.
27. Qualified Event: A spouse or former spouse of an employee who was participating in the health plan or other medical benefit on the day prior to loss of coverage due to a qualifying event.
28. Qualified Health Plan: A group health plan that provides health and/or medical care. Such plans may include certain Section 125 cafeteria plans (e.g., flexible health care spending accounts), health reimbursement arrangements, employee assistance programs, and long-term care plans.
29. Reasonable Notice: At least two (2) weeks' notice before voluntary separation or resignation from employment.
30. Recall Rights: Within six (6) months after being laid off, an employee may be placed in a position within the same classification as that held immediately prior to layoff, without competitive recruitment. These recall rights are only valid for the first six (6) months after the layoff occurs. After the six (6) month period, laid off employees may be considered for available positions through competitive recruitment and selection at their current LDSS.
31. Regular Employee: Salaried, full-time, or part-time employee who has successfully completed a twelve (12) month probationary period, and who has access to the grievance procedure.
32. Resignation: An employee's voluntary separation from employment.
33. Restricted Employee: Person employed in a position with limited funding or duration and who cannot be employed in the position longer than the stated duration of the position. Restricted employees serve a twelve (12) month probationary period. These employees do not gain access to the grievance procedure upon completion of the twelve (12) month probationary period.
34. Seniority: Related to layoff process; one of the criteria used by LDSSs to determine the order in which employees will be impacted by position abolishment. Seniority is calculated based on total continuous LDSS service time computed from the last employment or re-employment with the LDSS implementing the layoff. Computation of service includes approved leaves with pay and without pay. Seniority applies to probationary and regular employees.
35. Separation: Voluntary or involuntary end of employment.
36. Temporary Employee: Person employed with the understanding that the employment is of limited duration, typically no longer than a twelve-month period. A temporary employee does not serve a 12-month probationary period and does not have access to the grievance procedure.
37. Termination: Involuntary loss of employment due to disciplinary discharge, substandard performance, violation of the Standards of Conduct or another basis.

38. Valid Vacancy: A vacant, fully funded, full- or part-time, permanent, or restricted position that has been designated by the local board to be filled through placement options or a competitive recruitment and selection process.
39. Voluntary Separation: A separation that occurs because an employee chooses to end employment with the LDSS. There are three (3) reasons for voluntary separation: resignation, job abandonment, and death.

PART IV: GRIEVANCE PROCEDURE

1. Access: Refers to not only the ability of certain employees to be able to make use of the grievance procedure to a grievance procedure to seek redress from unfair application of policy, discriminatory or illegal employment practices, disciplinary actions, or retaliation; but also, the requirement of the LDSS to provide this process to its employees.
2. Administrative Hearing: A formal proceeding involving disputes under the authority of governmental agencies.
3. Administrative Hearing Officer: A person appointed to oversee and preside over hearings in legal or administrative proceedings.
4. Case Presentation: Stage of the grievance procedure where both the employee and the agency are permitted a full and equal opportunity to address the presiding party (either an administrative hearing officer or a panel) to offer statements, evidence, any other material to support their arguments. The employee and the LDSS may be represented by legal counsel or other representatives. Such representatives may examine, cross examine, question, or present evidence before the presiding party.
5. Conciliation: An informal process in which an impartial, unbiased individual trained in dispute resolution (neutral third party) assists in resolution, often without having the parties meet together. Conciliation is an alternative form of dispute resolution that may occur instead of the grievance procedure.
6. Fact-Finding Meeting: A required meeting that occurs during the management resolution steps of grievance procedure where all relevant information is gathered, and pertinent issues are identified. Regardless of management resolutions step (first, second, or third), a written response is required and it must be provided on or as an attachment to the [LDSS Local Agency Employee Grievance Form](#) within five (5) workdays of the meeting.
7. Grievable Issue: Matters that are qualified to be brought forth for resolution through the grievance procedure.
8. Grievant: An employee who submits a grievance for resolution through the grievance procedure.
9. Legal Counsel: A person who is licensed and authorized to give legal advice or represent clients in legal matters or court proceedings.
10. Management Resolution Steps: The grievance procedure begins when an employee complaint cannot be resolved by conciliation or mediation. There are three (3) resolution steps that occur at the beginning of the grievance procedure; they are the first resolution step, the second resolution step,

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and the third resolution step. These steps generally follow sequential order and occur prior to the grievance qualifying for an administrative hearing.

11. Mediation: A more structured process than conciliation in which a neutral third party (the mediator) facilitates a meeting of the involved parties so they may reach a mutually acceptable solution to their dispute. Mediation is an alternative form of dispute resolution that may occur instead of the grievance procedure.
12. Nongrievable Issues: Matters that are not qualified to be brought forth for resolution through the grievance procedure.
13. Panel: A group of individuals who preside over administrative hearings when an administrative hearing officer is not appointed. A panel shall consist of three members: One member appointed by the employee; one member appointed by the LDSS; and a third member selected by agreement of the two panel members. If the two panelists do not agree, the chief judge of the circuit court in the jurisdiction in which the grievance arose shall appoint the third member.
14. Qualifying Actions: Valid reasons that a grievance may be eligible for an administrative hearing.
15. Witness: A person who has knowledge of an event from personal observation.
16. Written Response: Documentation that must be provided to the employee within five (5) workdays following a fact-finding meeting. The written response must be provided on or as an attachment to the [LDSS Local Agency Employee Grievance Form](#).

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