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COLFAX COUNTY PERSONNEL POLICY AND PROCEDURES

ORDINANCE NO. 2004-2

**AN ORDINANCE RELATING TO THE EMPLOYMENT POLICIES OF
COLFAX COUNTY, NEW MEXICO, AND REPEALING THE COLFAX
COUNTY ORDINANCE NO. 2000-4**

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BE IT ENACTED BY THE BOARD OF COMMISSIONERS OF COLFAX COUNTY, NEW MEXICO:

Personnel Policy & Procedures

I. INTRODUCTION

Colfax County, its Elected Officials and its Department Heads, reserve exclusive right over hiring and discharge of employees of the County, under the regulations herein provided. The purpose of the policy and procedure contained herein is to establish consistent, basic policy and procedure concerning relations between the County of Colfax, its Elected Officials, Department Heads and its employees.

These personnel policies and procedures do not and are not intended to create a contract of employment by and between Colfax County or any of its Elected Officials or Department Heads and any employee, or to serve as an offer to enter into a contract of employment, or to grant or offer a right to any employee to continued employment.

These personnel policies and procedures are subject to unilateral change, modification, or discontinuation by Colfax County at any time with or without notice, including but not limited to changes to benefits provided and to personnel practices. The changes will apply to current as well as future employees.

Each employee shall become familiar with and comply with these personnel policies and procedures. Any violation of these policies and procedures by an employee shall result at the sole direction of Colfax County in disciplinary action up to and including dismissal.

Formulation of definite policy and procedure cannot be readily applied to every possible problem or situation. Nevertheless, it is believed that the policy and procedure contained herein will serve as a general basis and guide for the proper, efficient, and effective administration of personnel matters relating to the employees and Elected Officials of Colfax County, New Mexico.

The personnel policy and procedure contained herein replaces and supersedes all previously issued personnel policy and procedure applicable to the employees, Department Heads and Elected Officials of Colfax County, New Mexico.

The Board of Commissioners of Colfax County, New Mexico, declares that it is necessary for the public peace, health and safety that this ordinance take effect immediately after passage in open meeting. This ordinance shall take effect when it is recorded in the book kept by the Colfax County Clerk for that purpose and authenticated by the signature of the Colfax County Clerk. The ordinance will remain in effect until such time as this ordinance is amended or revised in open meeting by the Colfax County Board of Commissioners.

Colfax County is an equal opportunity employer and does not discriminate against employees or job applicants on the basis of age, race, religion, color, creed, culture, philosophy, ethnic identity, national origin, sex, mental or physical impairment, Vietnam-era or uniformed armed service.

All persons having the authority to hire, discharge, transfer, or promote personnel shall support, without reservations, a non-discriminatory policy of hiring, or transferring to any vacancy, any qualified applicant.

Colfax County will offer equal opportunity for employment and advancement of all qualified employees and applicants.

II. COLFAX COUNTY POLICY ON SEXUAL HARASSMENT, DISCRIMINATION AND HARASSMENT

The policy of the Board of County Commissioners of Colfax County (hereafter sometimes referred to as either the "County" or "Colfax County") forbids discrimination against any employee or applicant for employment on the basis of sex. The County will not tolerate and expressly forbids sexual harassment of any type by any of the County's elected officials, appointees, employees, non-employee volunteers or independent contractors subject to the control and authority of Colfax County. This prohibition extends to sexual harassment in the workplace, in all other work-related settings such as at job sites or on business or educational trips, and at any and all work related social events.

A. Definitions

1. Sexual harassment is any unwanted sexual attention or conduct of a sexual nature when:
 - (a) submission to such attention or conduct is made, either explicitly or implicitly, a term of an individual's employment;
 - (b) submission to or rejection of such attention or conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - (c) such conduct has the purpose or effect or unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

2. Sexual harassment may include, but is not limited to:
- (a) verbal or physical sexual advances;
 - (b) subtle pressure for sexual activity;
 - (c) touching, pinching, patting or brushing against;
 - (d) comments regarding physical or personality characteristics of a sexual nature;
 - (e) sexually-oriented “kidding,” “teasing,” double –entendres or jokes; and
 - (f) any and all other harassing conduct to which an employee would otherwise not be subject to but for such employee’s sex.

B. Policy Regarding Sexual Harassment

Colfax County is committed to enforcing a policy prohibiting sexual harassment that:

1. provides for a work environment free from all forms of sexual harassment and forbids sexual harassment of any type in the workplace, in any work related setting, or at any work related social events;
2. applies to the actions of all County Elected Officials, Department Heads, appointees, employees, volunteers and independent contractors subject to the County’s control and authority;
3. ensures that appropriate corrective action shall be taken if the County’s Sexual Harassment Policy, or any of its provisions, have been are violated;
4. establishes a complaint procedure that is fair and confidential to the extent possible and protects against retaliation for filing or testifying as a witness to a complaint;
5. ensures that all complaints are investigated promptly, thoroughly, and fairly; and
6. ensures that all Elected Officials, Department Heads, appointees, employees volunteers and independent contractors subject to the County’s control and authority are fully trained in their rights and responsibilities under this policy.

C. Sexual Harassment Complaint Procedures

1. It is the express policy of the County to require victims of sexual harassment to report such claims. Any employee who believes he or she has been the subject of sexual harassment shall report such matters to the County Manager. If the County Manager is the alleged offender, then the report shall be made to the County Clerk. If an employee is uncomfortable bringing a complaint to either the County Manager or County Clerk, the complaint may be brought to the Chairman of the County Commission.

2. Upon receipt of a complaint of sexual harassment, the County Manager, or in appropriate cases the County Clerk, shall thoroughly investigate the allegations. The investigation should begin as soon as practicable following a report of alleged sexual harassment. The investigation should include taking a statement from the individual complaining about the alleged harassment, interviewing of appropriate witnesses, and meeting with and interviewing the alleged harasser. In all cases, the County Manager, or the County Clerk in appropriate cases, shall take any and all steps necessary to protect the person complaining of harassment from further harassment. This may include, but need not be limited to, insuring the alleged harasser and victim do not work in the same office or on the same job site until the complaint is resolved and otherwise taking steps to avoid contact between the alleged harasser and the victim on the job at any work related functions and at any work related social events until the complaint is resolved. This may require the County to place the alleged harasser in a leave with pay status during the pendency of the investigation and until resolution of the complaint.

3. While conducting the investigation, the County Manager, or in appropriate cases the County Clerk, shall take particular care to protect the privacy and confidentiality of the individuals involved in the complaint and in the investigation of the complaint, to the extent possible. All persons bringing sexual harassment complaints and involved in the investigation of a sexual harassment complaint shall maintain the confidentiality of the complaint and investigation process, unless directed to the county by appropriate court order or official directive.

4. The County Manager, or inappropriate cases the County Clerk, will carefully document his or her investigation and, at its conclusion, shall prepare a written report of the investigation. This report, along with all other documentation of the investigation, shall be maintained by the County Manager, or in appropriate cases by the County Clerk for an indefinite period of time. The County Manager, or in appropriate cases the County Clerk, shall disclose the result of the investigation to the alleged harasser and the alleged victim.

5. In the event the County Manager, or in appropriate cases the County Clerk, determines that there has been a violation of the County's Sexual Harassment Policy, the County Manager, or in appropriate cases the County Clerk, shall take prompt, corrective action. This may include, but is not limited to, recommending disciplinary action against the alleged offender up to and including dismissal from employment with the County. In the event a complaint of sexual harassment has been made in bad faith, the county may, in its sole discretion take disciplinary action, up to and including dismissal, against the person bringing the sexual harassment complaint.

6. It is the policy of Colfax County that no person bringing a complaint of sexual harassment shall be retaliated against for bringing said complaint, and that no witness involved in an investigation of a sexual harassment complaint shall be retaliated against for participation in such investigation.

D. Additional Rights

Nothing in this policy shall prohibit or discourage any person from filing a complaint directly with the U.S. Equal Employment Opportunity Commission Office or the New Mexico Human Rights Commission.

E. Anti-discrimination and Harassment Policy

The county further prohibits discrimination, harassment and retaliation against any employee or applicant for employment on the basis of age, race, sex, national origin, religion, physical or mental impairment or Vietnam-era or uniformed armed services statutes. The county shall not tolerate and expressly forbids such discrimination, harassment and retaliation by any of the County's elected official, appointees, employees, non-employee volunteers or independent contractors subject to the control and authority of the county. All the provisions of the county's sexual harassment policy including the complaint proceedings apply equally to claims of discrimination, harassment and retaliation against any employee or applicant for employment on the basic age, race, sex, national origin, religion, physical or mental impairment or Vietnam-era or uniformed armed services statutes.

III. COLFAX COUNTY DRUG AND ALCOHOL ABUSE POLICY

A. Policy

The problem of alcohol and drug abuse throughout county entities is a serious one. It has affected the economic health of county entities as well as the personal safety and health of our employees and general public. The damaging effects of alcohol or drug abuse in the nation's work places are well documented:

1. Increased Safety Risks: Impaired ability to work and think clearly endangers the lives of the users as well as the lives of others in the same work environment (employee as well as general public exposure). Statistics show that drug abusers have three to four times more on-the-job accidents and are more likely to file a Workers' Compensation Claim than are non-abusers. The abuser also commits more mistakes than employees who are able to concentrate on their work. The relationship between drug abuse and safety can be found in increased on-the-job accidents, higher liability insurance costs, increased Workers' Compensation Claims, and an increased disregard for safety rules, etc.

2. Loss of Productivity: Alcohol and drug abuse reduces productivity while the employee is under the influence. Factors contributing to decreased productivity include increased absenteeism, tardiness, poor workmanship, etc. Employees with a drug abuse problem do not function at their normal potential. The drug abuser is absent more often and requests early departures from work twice as often as the non-abuser.

3. Increased Medical and Health Expenses: Alcohol and drug abuse is a health hazard, and therefore a medical problem that results in higher group insurance medical costs, sick leave, and excessive general health care expenses. National statistics show that medical problems associated with drug abuse cost our nation billions of dollars annually. Drug abusers use health benefits two to three times more than non-abusers.

Colfax County has a responsibility to all its employees to provide a safe work place, and also has the responsibility to the public to ensure that its safety and trust in Colfax County is protected. Therefore, Colfax County prohibits the use of alcohol, illegal drugs, or any controlled drug that has not been prescribed by a doctor for an employee's specific use, on County time or on County property (including use of County vehicles outside working hours) and work areas.

Possession of or being in a condition where job performance or ability to work safely is limited in any way by the previous use of any of the above are grounds for immediate disciplinary action, including discharge.

In order to assist Colfax County in the enforcement of this policy regarding testing for the presence of alcohol and illegal drugs, this policy is being implemented effective with the adoption and recording of this ordinance in the Office of the Colfax County Clerk.

4. Administration of Policy: The Alcohol and Drug Abuse Policy and program has full support of management (Commissioners, County Manager, and elected officials). Compliance with this policy and program is a condition of employment for all current and future employees. Enforcement of this policy is

the responsibility of each supervisor within the limitations and guidance outlined in this document.

The County Manager will administer this program. This person will be a contact for those employees requiring outside assistance to deal with their problem.

Department heads and supervisory personnel will be responsible for the day-to-day management of this Alcohol and Drug Abuse Policy. This day-to-day control includes all meal breaks as well as any other break periods.

B. Pre-Employment Drug & Alcohol Testing

1. Successful applicants to whom positions are offered may be required to undergo urinalysis testing to detect alcohol use or use of illegal substances. Applicants will be required to provide a specimen for analysis.
2. All offers of employment shall be conditional upon the applicant passing a substance abuse or alcohol test which shall be administered by a laboratory selected by the County. The laboratory will complete the analysis and provide the results to the County Manager. If the applicant fails the pre-employment drug screen as a direct result of a positive substance abuse test, the conditional offer of employment will be rescinded.
3. The costs of pre-employment drug and alcohol testing will be paid for by the County.

C. Reasonable Suspicion Testing

1. Any Colfax County employee shall be tested for alcohol or substances if an Elected Official, Department Head or Supervisor has reason to suspect that the employee is engaging in the use of alcohol or drugs on the job, or is reporting to work under the influence of alcohol or illegal or controlled substances. Reasonable suspicion that an employee is under the influence of alcohol or illegal or controlled substances means that an employee is affected in an objectively detectable manner. It is supported by objective evidence based upon known specific articulable and observable facts that would lead a reasonable person to believe that the employee is under the influence of alcohol or other illegal or controlled substances.

2. Circumstances which would make such tests appropriate include, but are not limited to, exhibiting behavior normally associated with persons under the influence of alcohol or drugs, or an involvement in an on-the-job accident or other work related incident where alcohol or drug abuse is suspected to be a contributing factor.

3. When there is reasonable suspicion that an employee has violated the above policy, Colfax County reserves the right, under this policy, to require any employee to go to a designated medical facility for a urinalysis to determine the presence of alcohol or drugs in his or her system. This screening will be done on County time and at County expense, and will be mandatory. Testing an employee's urine for drugs is an effective means by which to identify those in need of counseling, treatment or disciplinary action.

(a) When there is reasonable suspicion that an employee has reported to work, is conducting work, has been involved in an accident, is representing the County or is on County premises while under the influence of alcohol or other substances, the respective Elected Official, Department Head or Supervisor shall contact the County Manager. The County Manager should be consulted regarding the circumstances and evidence as to whether or not testing is appropriate to the specific situation. If the Elected Official, Department Head or Supervisor decides to proceed with testing, the laboratory or medical office will be notified and will schedule the employee for immediate testing.

(b) Continuous visual contact by a supervisor of the same gender will be required until the employee is turned over to the approved clinic for testing. The clinic must be notified in advance of the supervisor and employee arriving at the clinic. No sampling will be done on County property or job work areas. All testing done as a part of the Alcohol and Drug Abuse Policy will be done as a direct cost to the County. **ALL EMPLOYEE INJURIES WILL BE TAKEN CARE OF PRIOR TO ANY DRUG TESTING.** The County will transport the employee to the testing site. The impacted employee will be placed on administrative leave with pay.

(c) An employee who is unable to give or says he or she is unable to give a sample should be told that he or she has a set length of time to provide that sample. The employee should also be advised that if he or she fails to supply a sample within that time, he or she will be treated the same as an employee who refuses to comply with the requirement of urine testing. A reasonable length of time is usually one to three hours.

(d) If an employee refuses to submit to an examination, the employee will be immediately suspended from work without pay and given an opportunity to speak to the County Manager as soon as

reasonably possible. At that time, the employee may explain why he or she should not be discharged for refusal to submit to testing or examination.

(e) All testing results shall be reported to the County Manager. If the results are negative, the County Manager will notify both the employee and his or her Elected Official, Department Head or Supervisor and the employee shall be returned to work at the inception of the employee's next regularly scheduled work shift unless other disciplinary action is pending.

(f) An employee involved in a motor vehicle accident while driving a county vehicle are subject to immediate mandatory drug testing.

4. If the results are positive, the County Manager shall consult with the impacted employee and determine the validity of the results.

D. Positive Test Results

1. The guidelines established by the National Institute of Drug Abuse will be used to determine whether an employee tests positive.

2. If an employee tests positive for alcohol or illegal or controlled substances, the employee will be placed on administrative leave until a predisciplinary hearing is held.

E. Safety Sensitive Positions

1. For purposes of this Policy, all law enforcement officers, correction officers, employees required to have a commercial driver's license, and employees who have control or access to controlled drugs or reports associated with these drugs shall be classified as holding safety sensitive positions. It shall be the responsibility of the County Manager to determine additional positions, if any, which shall be classified as safety sensitive.

2. The following criteria shall be used as a guide for determining additional positions to be classified as safety sensitive:

(a) The extent to which the job responsibilities impact upon the safety of the public.

(b) The extent to which the job responsibilities expose the employee or co-workers to hazardous conditions.

(c) The extent to which the job responsibilities require responsibility for the physical safety of others.

3. Alcohol and illegal or controlled substance testing for employees employed in safety sensitive positions shall be done in accordance with Department of Transportation Regulation Federal Motor Carrier Regulations.

F. Testing Procedures

Testing procedures for alcohol and illegal or controlled substance testing shall be in accordance with United States Department of Transportation regulations, as the same may from time to time be amended.

G. Self Identification

An employee who self-refers in advance of a notification of a substance abuse test shall be placed on an appropriate leave status until successfully completing an approved drug rehabilitation program. The employee shall be responsible for paying the cost of the rehabilitation program unless the employee has insurance coverage for such treatment. Upon the employee's return to work after completion of the of the drug rehabilitation program, the employee shall be required to submit to unannounced, unscheduled substance abuse tests for a period of two (2) years. Employees in safety sensitive positions shall be tested in accordance with Department of Transportation Regulation Federal Motor Carrier Regulations. If the employee tests positive during the two (2) year testing period, the employee shall be subject to disciplinary action up to and including termination from employment.

H. Refusal to Submit to Alcohol or Substance Abuse Testing

If an employee refuses to submit to an examination, the employee will be immediately suspended form work without pay and given an opportunity to speak to the County Manager as soon as reasonably possible. At that time, the employee may explain why he or she should not be discharged for refusal to submit to testing or examination.

I. Retesting

An applicant or employee who tests positive on a drug test may elect to have, at his or her own expense, a retest of a portion of the urine sample at a certified drug testing laboratory of the applicant or employee's choosing, provided the applicant or employee's urine sample is still available. The applicant or employee's position will not be held open for the applicant during the retesting.

J. Confidentiality

No laboratory reports or test results shall appear in the employment personnel file unless they are part of a disciplinary action, but shall be placed in a separate file with other medical records.

IV. SEVERABILITY

Declaration that any section, part or portion of the Ordinance is unconstitutional, in excess of authority, or otherwise void or ineffective shall not affect the remainder of the Ordinance.

V. REVIEW PROCEDURES

A review committee, consisting of all Elected Officials affected by the policy, their First Deputies, and the County Manager and office manager will review this ordinance as needed. The review committee will, prior to the end of each calendar year, review the ordinance and make recommendations for revision to the Colfax County Board of Commissioners at a regular meeting to be held during the following calendar year.

VI. DEFINITIONS

A. **EMPLOYER:** The Board Of County Commissioners of Colfax County, New Mexico (sometimes referred to as the "County" or "Colfax County").

B. **EMPLOYEE:** Any person employed by Colfax County.

C. **FULL TIME EXEMPT EMPLOYEE:** These employees serve at the pleasure of the Elected Officials, Department Heads, and County Commission and are not entitled to the Grievance or Disciplinary Procedures of the Colfax County Personnel Policy and Procedures. They may be terminated at any time without cause, and nothing herein shall be construed to limit the unilateral right of Colfax County to discharge such employees in an at-will manner consistent with state and federal law. Such persons are exempt employees as defined by the Fair Labor Standards Act, and are not entitled to overtime compensation. A full time exempt employee for the purpose of determining the applicable Personnel Policy and Procedure will be defined as any person employed in a full time position which position is included in the list below:

All Elected County Officials
 First Deputies of Elected County Officials
 Undersheriff
 County Manager
 Assistant County Manager
 Superintendent of County Roads and Road Foremen
 County Detention Center Administrator
 County Detention Center Administrative Lieutenant

D. FULL TIME NON-EXEMPT EMPLOYEE: Any person in a non-temporary position which requires 35 hours per week (52x35=1820 prorated) other than those persons employed as Full Time Exempt Employees. Overtime will be paid as determined in accordance with wage and hour regulations and will be paid as overtime compensation pursuant to the Fair Labor Standards Act.

E. PART TIME EMPLOYEE: Any person employed in a position which normally requires less than 35 hours per week. All part time employees serve at the pleasure of the Elected Officials and Department Heads and are not entitled to the Grievance or Disciplinary procedures of the Colfax County Personnel Policy and Procedures. Such employees may be terminated at any time without cause.

F. TEMPORARY EMPLOYEE: All temporary and all seasonal employees are employed by the Elected Officials or Department Heads and are not entitled to the Grievance or Disciplinary Procedures of the Colfax County Personnel Policy and Procedures. Such employees may be terminated at any time without cause. An example of a temporary employee would be a person employed by a Department Head or Elected Official, for a full time position which has been established for a specific project or group of assignments.

G. CONTRACT EMPLOYEES: All contract employees serve at the pleasure of the County Commission, and subject to contractual provisions, such employees are not entitled to Grievance or Disciplinary Procedures of the Colfax County Personnel Policy and Procedures. Subject to contractual provisions to the contrary, such employees may be terminated at any time without cause. Examples of contract employee would be the DWI Coordinator and the E-911 Coordinator.

H. PERSONNEL DATE: The date that the employee was employed by the County on a full time basis. This date will be used to compile all benefits.

I. EXEMPT: First Deputies and Undersheriff shall serve at the pleasure of the Elected Official. The Road Superintendent, the Road Foreman, Detention Center Administrator, Detention Center Administrative Lieutenant, Assistant County Manager, and the County Manager shall serve at the pleasure of the County Commission. These employees are exempt from the personnel policy, with the exception of the policies relating to P.E.R.A., drug and alcohol, vacation, sick leave, jury or witness duty, bereavement leave, leave of absence and paid holidays.

VII. PERSONNEL RECORDS

- A. Personnel records are the property of the County.
- B. Colfax County shall establish and maintain in the office of the County Manager a personnel file of all active and inactive employees of Colfax County. The personnel file shall include but not be limited to the following:
 - 1. Employment Application;
 - 2. Completed and signed W-4;
 - 3. Completed and signed authorizations for payroll deductions;
 - 4. Completed and signed waivers for insurance benefits;
 - 5. A signed statement that the employee has been given a copy of the County Policy and Procedure Manual and a copy of this Ordinance;
 - 6. Disciplinary reports;
 - 7. Pay increase or decrease authorizations signed by the appropriate department head;
 - 8. Personnel performance and review forms; and
 - 9. Proof of Citizenship.
- C. Privacy of personnel files shall be respected under any and all applicable State and Federal Laws.

- D. In the event an employee's medical records or medical history shall be received by the County, such documents and information shall not be filed with such employee's other personnel documents, but shall be filed in a separate medical records file, shall be kept under lock, and shall be accessible only by individuals who have a demonstrated need for access to such files.
- E. Colfax County shall establish and maintain a performance system as part of the employee's personnel file. The system will include but not be limited to an initial employee conference and written review. Performance review and seniority shall be the basis for merit salary increases.

VIII. EMPLOYEE PROBATION

- A. The probationary period for full time non-exempt employees shall be six (6) months from the employee's personnel date. The (6) six month probation period will be waived if the employee has been employed for more than (6) six months as a part-time or temporary employee.

- B. Full time non-exempt employees may be terminated without cause during the probationary period, at the discretion of the Elected Official or Department Head and without the right of the grievance or appeal.
- C. There is no probationary period for exempt, part-time, temporary, or contract employees. Exempt, part-time, temporary, or contract employees may be terminated without cause at any time.
- D. Prior to the completion of the probationary period, the Department Head or Elected Official will review with the employee the employee's job performance during the probationary period. During the review, attention should be given to the employee's strengths and areas of needed improvement. The employee review will be summarized and typed upon completion. The typed summary will be signed by the Department Head or Elected Official and the employee, a copy will be sent to the Department Head and the employee, and the original will be sent to the County Manager and placed in the employee's personnel file. A review during an employee's probationary period does not automatically qualify the employee for a job or a salary increase.

E. The probationary period shall be extended for any employees not meeting statutory requirements for employment, until such time as these requirements are met; for example, New Mexico Law Enforcement Academy course qualification for Sheriff's deputies.

IX. EMPLOYEE SALARIES

- A. By resolution, at the first meeting of each fiscal year, the Colfax County Board of Commissioners shall establish starting salaries for each department.
- B. First Deputy salaries shall be a minimum of 50% and a maximum of 85% of the elected official's salary. The starting salary of the First Deputy will depend on experience; therefore, a First Deputy with no experience could start at 50% of the elected official salary.
- C. Upon implementation of this Personnel Policy, each Department Head must submit a detailed job description to the County Manager for each position in his or her respective department. The job description should also indicate the individual currently holding the position and should include the date the job description was created. The job description will be a part of the personnel file of the employee currently holding the position and shall be incorporated into the performance review system.
- D. Elected Official salary increases shall be governed by New Mexico State Statutes.
- E. The regular office hours for all departments will be forty (40) working hours per week.

F. Medical, sick, and vacation benefits shall be provided for full time exempt employees and non-exempt employees only. Part-time employees that have more than five (5) consecutive years of employment with the county may, at such employees' option, be provided medical benefits. Medical, sick, and vacation benefits will be provided for contract employees for length of the contract. Workman's compensation coverage shall be provided all employees in accordance with state law.

X. ANNUAL LEAVE

A. Annual leave for full time exempt employees and full time non-exempt employees will accrue at the rate indicated in the following table:

LENGTH OF SERVICE	ACCRUED DAYS PER MONTH
One year but less than 5 years.....	1 .50 per pay period
5 years but less than 10 years.....	1-1/4 .625 per pay period
10 years but less than 15 years.....	1-1/2 .750 per pay period
15 years or more.....	1-2/3 .835 per pay period

Contract employees will accumulate (6) six sick days and (6) six vacation days per year with no carryovers.

B. Annual leave may be accumulated from year to year up to a maximum of thirty (30) days. Annual leave balances in excess of thirty (30) days as of December 31 of any calendar year will be lost. The employee or the employee's estate will be paid for each day of the unused annual leave at the time of the employee's voluntary or involuntary termination, retirement, death, or total disability up to a maximum of thirty (30) days plus the number of days accrued and unused during the current calendar year. The employee or the employee's estate will be compensated at the highest hourly rate of pay attained during his or her entire number of years of continuous service. The employee may elect to have his or her annual leave compensation paid in a lump sum or pro-rated over the appropriate number of pay periods. The estate will be compensated in a lump sum. The highest hourly rate will be determined by dividing the employee's highest attained annual salary by 2,080 hours. Lump sum payments shall be made within twenty (20) days from the date of the employee's voluntary or involuntary termination, retirement, death or total disability.

XI. SICK LEAVE

- A. Sick leave for full time exempt employees and full time non-exempt employees will accrue at the rate of one (1) day per month, and may be accrued up to a maximum of ninety (90) days.
- B. Absences in excess of the employee's accrued sick leave will be charged first against the employee's accrued annual leave and second to leave of absence without pay.
- C. When an employee absents himself or herself from his or her work without the consent of the employer for any reason other than proven illness or injury, such employee may be discharged. If an employee is absent by reason of injury or illness, the Department Head may request a doctor's verification of such injury or illness.
- D. The employee or employee's estate will be paid for each day of unused sick leave at the time of the employee's voluntary or involuntary termination, retirement, death, or total disability, up to a maximum of ninety (90) days. The employee may elect to have his or her sick pay paid in a lump sum or pro-rated over the appropriate number of pay periods. The estate will be compensated in a lump sum. The employee or the employee's estate will be compensated at the highest hourly rate of pay attained during his or her entire number of years of continuous service. The highest hourly rate will be determined by dividing the highest attained annual salary by 2,080 hours. Lump sum payments shall be made within twenty (20) days from the date of the employee's voluntary or involuntary termination, retirement, death or total disability.
- E. Any full time employee may donate sick leave and sick leave only to another full time employee who is ill or injured and has used all of his or her annual and sick leave. An employee may donate only those sick days he or she has accrued in excess of twenty (20) days. A maximum of sixty (60) donated days can be used in a calendar year by any full time employee.

XII. MEDICAL EMERGENCY

Any full time employee who has a medical emergency, subject to the approval of the Colfax County Commission, may be paid, first his or her accrued vacation, and second his or her accrued sick leave (if necessary). The employee must agree that the County will make such payment directly to the medical facility or the physician.

XIII. PERSONAL LEAVE

Personal leave shall be available to an employee as provided by the Family Medical Leave Act ("FMLA"). Employees requesting leave under the FMLA must utilize sick or annual leave prior to the granting of a leave of absence without pay.

XIV. MILITARY LEAVE

Leave for required military duty shall be governed by all applicable Federal and State laws. Extended active duty requested beyond that covered by Federal and State law must have approval of the Board of Commissioners of Colfax County.

XV. BEREAVEMENT LEAVE

A. When death occurs in an employee's immediate family, an employee upon request may be excused for up to five (5) consecutive working days with pay. Immediate family is to include only the following persons:

Spouse	Stepmother
Mother	Stepfather
Father	Stepbrother
Brother	Stepsister
Sister	Step grandparent
Grandparent	Stepchildren
Children	Stepmother-in-law
Mother-in-law	Stepfather-in-law
Father-in-law	Step grandchildren
Grandchildren	

B. When death occurs to any member of an employee's family, not listed above, the employee upon request may be excused for up to three (3) consecutive working days with pay, with written approval of the employee's Department Head or Elected Official.

C. At the discretion of the employee's Department Head or Elected Official, and in the case of the death of a friend, an employee may be excused for one (1) day with pay, with written approval of the employee's Department Head or Elected Official.

XVI. HOLIDAYS

- A. At the first meeting of each calendar year, the Board of Colfax County Commissioners will approve the schedule of holidays to be observed by the employees of Colfax County for that calendar year.
- B. All full-time exempt and full-time non-exempt employees will be paid for these scheduled holidays. Part-time and temporary employees will not be paid for these holidays. Part-time employees with (5) five years and over will be paid for scheduled holidays.
- C. Additional holidays are at the discretion of the Colfax County Board of County Commissioners.
- D. If a holiday falls during an employees' annual leave or sick leave, the holiday will not count as a day of annual leave or sick leave.
- E. All full-time exempt and all full-time non-exempt employees will be granted one personal day per year, to be taken by the employee on his or her birthday, or another day as agreed upon by the employee and his or her Department Head or Elected Official. Personal days may not be carried forward from year to year.

XVII. LEAVE OF ABSENCE AND AUTHORIZED TIME OFF

- A. Leaves of absence must be approved by an employee's Department Head or Elected Official after an appropriate request in accordance with the Family Medical Leave Act ("FMLA").
- B. All leaves of absence with pay, utilizing sick or annual leave, shall be used prior to the granting of a leave of absence without pay.
- C. All other short term leaves of absence without pay must be authorized in advance by the Department Head or Elected Official.

XVIII. JURY OR WITNESS DUTY

- A. An employee, when called for jury duty or subpoenaed as a witness, and while serving on such duty, will continue to be paid his or her normal wage.
- B. Payments received by the employee from the Court or Tribunal for jury or witness duty will be signed over to the County for deposit in the County General Fund.

XIX. VOTING LEAVE

- A. Any election day employees who are registered voters may absent themselves from employment for up to two (2) hours for the purpose of voting between the time of opening and the time of closing of the polls. The employee shall not be liable for any penalty for such absence. The Department Head or Elected Official may specify the hours during the period in which the employee may be absent.
- B. The provisions of paragraph XIXA above do not apply to any employee whose work day begins more than two (2) hours subsequent to the time the polls open, or ends more than three (3) hours prior to the time of closing of the polls.
- C. Any leave given to an employee hereunder is limited to the actual time needed to vote.

XX. LAY OFF

- A. Any employee may be laid off by the County due to lack of work, due to a reduction or elimination of functions by the County Commission, if a position is abolished, or due to budgetary considerations. When this occurs, the employer must notify the affected employee as soon as possible in writing, and state the reason he or she was laid off.
- B. Seniority will be one of the factors to be considered by the County in selecting which employee or employees will be laid off. Seniority for the purpose of calculating and accruing employee benefits will be considered to be the total years service that the employee has with the County. Seniority for the purpose of lay-off will be the employee's years within the Department of the County where such employee is currently employed. The County may also consider other factors, including work requirements, resource availability, qualifications and job performance, in the layoff decision.

XXI. COUNTY BUSINESS TRAVEL

- A. County business travel must be approved by the employee's department head.
- B. County business travel is defined as any travel required by the employee outside of the normal performance of the day-to-day requirements of the employee's job description.

C. County business travel shall be compensated in accordance with the Per Diem and Mileage Act of the State of New Mexico or as approved and adopted by the Board of Colfax County Commissioners.

XXII. DISCIPLINE AND TERMINATION

A. Disciplinary Procedure

1. The Disciplinary Procedures set forth herein and any and all grievance rights are for full time non-exempt employees only. Full-time exempt employees, part time employees, contract employees and temporary employees are not entitled to such disciplinary procedures, or the grievance rights set forth herein. Further, the County reserves the right to exercise judgment and render disciplinary action as determined appropriate based on the circumstances of each case. The degrees of discipline are as follows:

- (a) Oral reprimand: This is generally used for minor infractions or to correct minor faults in an employee's performance. The Supervisor should discuss the action with the employee. The Supervisor should make and keep a notation of the oral reprimand, but it should not be placed in the employee's official personnel file. Oral reprimands are not grievable.
- (b) Written reprimand. This is generally used when the infraction by the employee is of a more serious nature than that for which an oral reprimand would be used or if a prior oral reprimand was ineffective. Written reprimands shall be recorded and filed in the employee's personnel file along with a counseling statement delineating the conduct which needs correction. The reprimand shall be signed by the employee acknowledging receipt of the reprimand, prior to placement in the personnel file. If the employee refuses to sign the written reprimand, a witness other than the Supervisor presenting the reprimand shall attest, by his or her signature, that the written reprimand was presented to the employee and the employee refused to sign. An employee may submit a written rebuttal to the written reprimand, but the written reprimand is not grievable.
- (c) Suspension without pay. This is used when strong disciplinary action is needed for a single offense or for continued substandard job performance after attempts to correct such substandard performance have failed. An employee may be suspended without pay for a period not to exceed thirty (30) working days. A suspension without pay is grievable pursuant to the procedures set forth herein.

(d) Demotion. An employee may be demoted to a lower grade for a single serious offense or for continued substandard job performance after previous attempts to correct such behavior have failed. A demotion is grievable pursuant to the procedures set forth herein.

(e) Termination. An employee may be dismissed when other levels of discipline have failed to improve substandard job performance or unacceptable behavior, or when employee has engaged in behavior that is serious in nature and which is unacceptable for any County employee. A termination is grievable pursuant to the procedures set forth herein.

2. Notice of Intent to Discipline. The Elected Official, Department Head, or Supervisor shall present the employee with a Notice of Intent to Discipline when suspension, demotion, or termination is contemplated. The Notice of Intent to Discipline shall explain the reasons for the proposed action and the employee's right to a predisciplinary hearing. The Notice of Intent to Discipline shall be hand delivered to the employee and receipt acknowledged by the employee or sent to the employee by certified mail, return receipt requested. In cases where County property, other employees, or citizens could be or are at risk as a result of the employee's actions, the employee's Department Head, Elected Official or Supervisor may send the employee home on administrative leave with pay.

Oral and written reprimands do not require advance notification.

B. Disciplinary Hearings

1. Predisciplinary Hearing.

(a) Within three (3) working days of the receipt of the Notice of Intent to Discipline, the employee shall notify, in writing, the person who issued the Notice of Intent to Discipline, advising whether the employee will avail himself or herself of predisciplinary hearing. Such notice shall be hand delivered with receipt acknowledged. If the employee does not avail himself or herself of predisciplinary hearing, the Elected Official, Department Head or Supervisor shall issue a Notice of Final Action to the employee. The Notice of Final Action shall:

- (1) Specify the final action to be taken;
 - (2) Specify when the disciplinary action shall be effective;
- and
- (3) Inform the employee of his or her right to appeal the disciplinary action.

(b) In the event the employee wishes to avail himself or herself of a predisciplinary hearing, the person who issued the Notice of Intent to

Discipline shall meet with the employee and the employee's representative, if any, at a scheduled time. At the predisciplinary hearing, the employee shall have the opportunity to respond to the proposed disciplinary action.

(c) After taking the employee's response into consideration, a Notice of Final Action shall be issued to the employee if it is determined that discipline is warranted. The Notice of Final Action shall specify the final action to be taken, state the time, date, and location of the predisciplinary hearing, persons present, the effective date of final action, and the employee's right to appeal the disciplinary action. The Notice of Final Action shall be either hand delivered to the employee and receipt acknowledged by him or her or sent to the employee by certified mail, return receipt requested. If, after employee's response is considered at the predisciplinary hearing, the Elected Official, Department Head or Supervisor determines that discipline is not warranted, the employee shall be notified in writing of this decision.

2. Post-Disciplinary Hearings and Appeals to the Hearing Officer

(a) Notice Of Appeal. Within seven (7) calendar days of receipt of the Notice of Final Action following the predisciplinary hearing, the employee subject to a grievable disciplinary action (hereafter the "grievant") must notify the County of the grievant's intent to pursue a post-disciplinary hearing by sending to the Department Head or County Manager a written request for a disciplinary hearing before a hearing officer.

(b) Disciplinary Hearing Schedule. Within thirty (30) calendar days of the notification that the grievant wants to pursue a post-disciplinary hearing, the hearing officer shall hold a hearing. The parties must agree in writing to any postponement of the hearing beyond thirty (30) calendar days. At this hearing, the grievant shall have an opportunity to present witnesses and physical evidence and cross-examine the County's witnesses before a neutral hearing officer. The grievant and the County may be represented by legal counsel. The grievant may have his union representative present, if any.

(c) Appointment of Hearing Officer. Within seven (7) calendar days of the grievant's notification of intent to pursue a post-disciplinary hearing, the County Manager will provide the grievant with the name of the hearing officer. Within seven (7) calendar days of the receipt of the notification of the proposed hearing officer, the grievant will notify the hearing officer of any objection to the proposed hearing officer. The hearing officer will respond, either by disqualifying himself or herself or

by denying the objections of the grievant. The decision is binding on the parties.

(d) Hearing Officer Qualifications. Hearing Officers shall be personnel professionals, be familiar with public or private personnel systems, or have pertinent experience in the fields of management, education, or law. Qualifications for service as hearing officer do not include residing in Colfax County.

3. Post-Disciplinary Hearing Procedures:

(a) Rules of Procedure:

(1) The Hearing Officer will determine the date and time of the disciplinary hearing and any continuances. Such hearings will be conducted at a time and place which is mutually convenient to all parties concerned, but in any case no later than thirty (30) calendar days after the grievant notifies the County of the grievant's request for such a hearing, unless a later time is agreed to in writing by both the grievant and the County. Requests for continuances of hearings shall be made at least three (3) calendar days prior to the scheduled hearing, absent extenuating circumstances. Requests for continuances of hearings shall be made in writing directly to the hearing officer with copies to all parties involved.

(2) If the grievant requests, the disciplinary hearings shall be conducted as an open meeting with notice given to the public pursuant to the New Mexico Open Meeting Act.

(3) The Hearing Officer shall:

(i) Notify the County, through the County Manager, and the grievant of the date, place, and time of the disciplinary hearing;

(ii) Make rulings on procedural and substantive issues prior, during and, if necessary, after the hearing;

(iii) Determine the admissibility of evidence and testimony;

(iv) Follow the evidentiary standard for administrative agencies; and

(v) Issue a written ruling, including findings of fact and conclusions of law.

(4) The following persons are required to be present at all grievance proceedings unless otherwise excused by the hearing officer or by agreement of the parties: the grievant, the grievant's representative (if any), the County's designated representative(s) and the charging party.

(5) The parties shall stipulate to the facts and issues to the greatest extent possible prior to the hearing.

(6) Prior to the hearing, the parties or representatives of the parties shall prepare copies of all exhibits and evidence which are expected to be presented. The parties shall stipulate to exhibits to the extent possible and bring to the hearing adequate copies for the hearing officer as well as the opposing party.

(7) At least seven (7) calendar days prior to the hearing, all parties must present to the Hearing Officer: a statement identifying the issues to be heard, a witness list, and a complete list of any documents to be admitted as evidence. In the event of incomplete or late statements, witness lists, or lists of documents or exhibits, then and in that event such statements and exhibits shall not be introduced or admitted into evidence, and such witness shall not be permitted to testify. The hearing officer may also exercise his discretion in continuing the hearing.

(8) Witnesses in post-disciplinary hearings are not admitted into the hearing room until called upon to testify. This ban excludes those individuals required to be present as stated in paragraph XXII B3(a)(4) above.

(9) Notice of the hearing will be sent by the Hearing Officer to the grievant and to the County Manager and postmarked at least ten (10) calendar days prior to the scheduled hearing. Copies of the hearing notice shall be sent concurrently to all relevant parties.

(10) A tape recorded record of all post-disciplinary hearings shall be made by the County.

(b) Conduct of Hearings:

(1) The County shall present its statements of issues involved in the case, followed by the grievant. Opening statements are limited to the pertinent issues of fact and law.

(2) Order of Presentation:

(i) The County will present its witnesses and evidence to the Hearing Officer first. Witnesses for the County may be called and questioned on their involvement in or knowledge of the case. Following the testimony of each witness, the grievant will have the opportunity to cross-examine the witness. The Hearing Officer will then have the opportunity to question the witness on matters related only to the witness's testimony. The Hearing Officer shall restrict his questions to those necessary to clarify the testimony previously given. Follow-up or redirect questioning will be allowed at the discretion of the Hearing Officer. The Hearing Officer will make rulings on the admissibility of testimony and other evidence.

(ii) The grievant will then present his or her witnesses and evidence in the same fashion as required by Paragraph XXIIB3(b)(2)(i) above. The Hearing Officer will accord the same rules of procedure as were followed for the County as described in Paragraph XXIIB3(b)(2)(i) above.

(iii) Following presentation of the grievant's position, the County may offer rebuttal testimony. Such testimony shall be brief, and shall address only the issues brought forth in the grievant's presentation.

(iv) The County's closing statement shall be presented, followed by that of the grievant. The County shall then have the opportunity to make a final statement.

(3) Communication of Hearing Officer's Decision. The Hearing Officer's decision will be issued within twenty (20) calendar days of the post-disciplinary hearing, and will be signed by the Hearing Officer and transmitted to the grievant, Elected Official, Department Head or Supervisor, and the County Manager. The Hearing Officer may uphold, modify, or reverse the decision of the Elected Official, Department Head or Supervisor, and the Hearing Officer may reinstate the employee and award back pay and benefits. The record of the proceedings, along with all of the physical evidence admitted by the Hearing Officer, will be retained by the County

Manager for an indefinite period following the hearing date. The record shall be transcribed only in the case of appeal to the District Court by one of the respective parties. The party requesting the transcription shall make arrangements to pay for the cost of the transcription.

(4) Appeal of the Hearing Officer's Decision:

- (i) Either party may appeal the Hearing Officer's decision in accordance with New Mexico law.
- (ii) This Personnel Ordinance, if certified to be complete and in effect at the material times, may be included in the record on appeal at the request of any one of the respective parties at any time before forwarding the record to the District Court.
- (iii) The appeal shall be one of review of the record (transcript) along with all the exhibits as admitted. No trial de novo or new evidentiary hearing will be accorded.

XXIII. GRIEVANCE

Procedure for Grieving Working Conditions and Other Work Related Problems: With respect to those conditions which an employee wishes to grieve but which are not subject to the formal grievance procedures set forth in this manual, including, but not limited to, dissatisfaction with working conditions or working relationships, the employee may contact the employee's Supervisor in an attempt to work out a solution. If the employee is not satisfied with the proposed solution, the employee may address the problem to the Department Head, the County Manager or the appropriate Elected Official. Unresolved problems may be presented to the Board of County Commissioners as a whole.

XXIV. RETIREE HEALTH

Colfax County is participating in the New Mexico Retirees Health Program.

XXV. NEPOTISM

A. Colfax County prohibits nepotism in the areas of promotions, demotions, transfers, reinstatements, new appointments or hires. It is nepotism for any Colfax County

employee or Elected Official to place by promotion, demotion, transfer, reinstatement, new appointment or new hire one who is related by blood (consanguinity) or marriage (affinity) within the third degree where immediate supervision would occur. If indirect supervision would result, that contemplated action should be placed before the Colfax County Commission before being made final. Further, if any such relationship occurs after an employee is hired, then the affected employee shall report the matter to the Elected Official or Department Head within seven (7) days. The Department Head or Elected Official will transfer the affected employee or refer the matter to the Colfax County Commission for further action. Failure to inform the Elected Official or Department Head may result in discipline.

B. This provision regarding nepotism extends to spouses, children (including step-children), siblings, parents and parents-in-law, nieces and nephews, aunts and uncles, grandparents, grandchildren and great-grandchildren.

XXVI. REPEAL OF PRIOR ORDINANCE

Colfax County Ordinance No. 1996-1 is hereby repealed in its entirety.

Approved this 8th. day of June, 2004.

**BOARD OF COMMISSIONERS OF
COLFAX COUNTY, NEW MEXICO**

Roy E. Auer
Chairperson

Charles B. Gonzales
Vice- Chairman

James B. Macchett
Member



ATTEST:

Barbara Costillo
Clerk of the Board