

Town of Payson, Arizona  
PERSONNEL POLICY MANUAL UPDATE – SUMMARY OF CHANGES  
August 2009

**Section 1 – General Provisions**

1.1 Definitions

The definitions section has been cleaned up. Substantive provisions have been moved to their appropriate sections in the manual. Unneeded definitions were eliminated.

1.2 Statement of Principals

The sections *employee classification* as well as *personnel officer* have been removed. These sections are covered in the definition section. The subsection on the *adoption and amendment of rules* has been removed since it is covered elsewhere in the manual. The sections on *right to contract for special service*, *policy interpretation* and *ADA compliance* have been removed.

**Section 2 – Hiring and Employment Practices**

This entire section has been cleaned up to reflect the hiring process currently used. Additionally, certain specifics have been removed and will be left to the Human Resources Department to implement.

2.3 Employment Testing

This subsection has been reduced significantly. The amendments still require fair and impartial testing, but leave flexibility based upon the position.

2.4 Appointment

This section now encompasses old section 2.5 – Appointments, as well as Requirements for Original Employments. The residency requirements (old section 2, Subsection 6, Subsection 2) have been removed.

2.5 Probation

The wording of this section has been simplified.

2.6 Residency Requirement

This requirement has been removed.

2.8 Layoff

Layoff has been given its own subsection. A statement was added pertaining to the re-instatement of employee returning to the same position if it re-opens within one year of layoff.

**Section 3 – Employee Compensation**

3.1 Pay Plan and Work Schedule

The provisions relating to alternative work schedules have been rewritten to clarify the provisions. Additionally, language has been added explicitly allowing the Town Manager to require alternative work schedules. The provisions related to Time Off and extended leaves have been moved to Section 5 (Leave and Attendance Provisions).

#### 3.1.9 Compensatory Time

Compensatory time will now be earned in fifteen (15) minute increments. Under the old policy it was earned in half-hour and one hour increments.

#### 3.1.10 Hours Worked

The provisions of Resolution 2459 were integrated, making vacation hours and holiday included in the definition of Hours Worked.

Sick Leave was removed from the list of items not considered as Hours Worked.

#### 3.2 Performance Reviews

This section was shortened. It was the consensus that the specific performance system and measures should be put together through Human Resources and by Administrative Policies and not in the Personnel Manual.

### **Section 4 – Separation of Employment, Employee Discipline and Due Process**

This section adds numerous technical changes but no substantive changes.

### **Section 5 – Attendance and Leave Provisions**

#### 5.1.3 Paid Time Off

The 2009 draft incorporates Paid Time Off in lieu of separate vacation and sick leave. The provisions of 5.1.3 (Paid Time Off) allow employees to take Paid Time Off in an amount equal to the old vacation time plus sick time. This section also contains carryover, buy out and separation pay outs that mirror the current carryover, pay out and separation policy. There is also a note that the payout for 2009 of what would have been unused sick time has been doubled as a result of the Council not making payouts in 2008.

Typographical corrections were made to the Fire Department pay out rates. The previous policy was typed incorrectly.

#### 5.2 Family and Medical Leave Act

The Family and Medical Leave Act provisions have been divided between Section 5.2 and Appendix D.

### **Section 6 – Supplemental Policies**

#### 6.1.1 Educational Assistance Program

Under the old policy, the maximum reimbursement was \$500 per fiscal year. Under the 2009 draft the maximum is equal to the cost of three credit hours at Arizona State University. This limitation is subject to annual budgeting by the Town.

The Service Awards Program and Medical Services Procedures have both been eliminated from the Manual. These will be handled administratively by the Human Resources Department.

- 6.4 Anti-harassment Policy  
The language in the proposed manual is the same language originally adopted in Ordinance No. 478/Resolution 1146.
- 6.5 Computer E-Mail and Internet Policy  
The computer e-mail and internet policy is now in Appendix E.
- 6.8 Substance Abuse Program  
The purpose and policy statements from the prior manual have been eliminated. The substance abuse program, itself, remains unchanged.

**TOWN OF PAYSON**

**PERSONNEL POLICY**

**MANUAL**

Revised: \_\_\_\_\_, 2009  
Resolution \_\_\_\_\_

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Appendix D Computer, E-mail, and Internet Policy



**SECTION: 01 – GENERAL PROVISIONS**

**1.1 - DEFINITIONS**

ANNIVERSARY DATE

That date on which one begins employment with the Town of Payson.

APPLICANT

A person who has filed a valid application for an advertised or posted vacancy.

APPOINTMENT CLASSIFICATION

- Regular: An employee who is hired to work on a regular, on-going basis. May be full or part-time
- Full-time: An employee who, on a regular and continuing basis, works a minimum of 30 hours each week (normally 40 hours per week).
- Part-time: An employee who, on a regular continuing basis, normally works less than 30 hours per week.
- Exempt: A position classified by the Fair Labor Standards Act as exempt from the overtime provisions of the Act.
- Non- Exempt: Hourly employees under Fair Labor Standards Act
- Temporary: Appointment made to fulfill the special needs of a department.
- Job-share: Two or more part-time employees who share a position that would normally be held by one person.
- Seasonal: An employee whose position normally exists during a specific season or portion of a year.
- Provisional: An appointment made by the Town Manager, which is made in order to provide for a continuous level of service in the absence of an eligibility list.

BENEFIT DATE

The date a regular employee is eligible to receive health insurance benefits pursuant to the Town’s health insurance plan.

CLASSIFIED EMPLOYEE

All regular full and part time employees

DEMOTION

The movement of an employee from one pay grade to another pay grade having a lower maximum rate of pay.

DEPARTMENT HEAD

A position within the organizational structure of the Town responsible for the supervision and operation of a department.

DISABLED PERSON

An individual who has a physical or mental impairment that substantially limits one or more major life activities in the individual or who has a record of such impairment or is regarded as having such impairment.

DISMISSAL

The involuntary separation of an employee from Town employment.



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### ELIGIBILITY LIST

List of applicants having passed examinations that qualify them for a specific position.

### EMPLOYEE

A person other than an elected official, receiving compensation for working for the Town of Payson.

### EXAMINATIONS

Open Competitive Examinations: An examination for a particular position which is open to all persons meeting the minimum qualifications.

Promotional Examinations: An examination for a particular position, limited to regular employees who meet the qualifications for the position.

Continuous Examination: An open, competitive examination, administered periodically. Names of successful candidates are placed on employment lists for a period of not more than one year.

### FLSA

Fair Labor Standards Act.

### FMLA

Family Medical Leave Act.

### IMMEDIATE FAMILY

An employee's spouse, father, mother, brother, sister, child, grandparent or grandchild; the spouse's father, mother, brother, sister, child, grandparent or grandchild.

### INTERVIEW BOARD

A board consisting of not less than three members whose purpose is to interview selected candidates for a position and make a hiring recommendation.

### LAY-OFF LISTS

The list of names of persons who were laid off from a position, based on a lack of work or funds.

### LEAVE OF ABSENCE WITH PAY

The following shall be considered leave with pay:

- Paid Time Off
- Military Leave
- Industrial Injury Leave
- Jury duty
- Bereavement Leave
- Personal Leave for Exempt Employees
- Holiday Leave

### MERIT INCREASE

A salary increase within the limits of a pay grade based upon employee performance.

### NON-CLASSIFIED EMPLOYEE

All Temporary and Seasonal employees.

### OUTSIDE EMPLOYMENT

Any activity undertaken by an employee with the expectation of financial gain



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### PAY PLAN

The pay plan consists of a pay scale having a number of pay grades with a range of pay generally consisting of a minimum rate, midpoint rate, and a maximum rate, and a classification schedule listing all positions. Each position is given a title and assigned a pay grade. The pay plan is to be used for all regular full and part time positions based upon the duties, responsibilities and qualifications of each position.

### PERFORMANCE REVIEW DATE

The date an employee's work performance will be evaluated.

### PERSONNEL HEARING OFFICER

A person selected by the Town Council to hear employee disciplinary appeals. Such person may not be a Town employee or elected official.

### PERSONNEL OFFICER

Employee appointed by the Town Manager who administers the personnel program for the Town.

### PROMOTION

An advancement from a lower pay grade to a higher pay grade involving an increase in responsibility.

### PROMOTIONAL LISTS

A list of names of employees who successfully complete promotional, competitive tests for a position.

### PUBLIC SAFETY EMPLOYEE AND PUBLIC SAFETY FIRST RESPONDERS

Any Police Officer or Fire Fighter (including paid-on-call).

### REINSTATEMENT LIST

A list of persons who have resigned in good standing.

### SERVICE YEARS

The total number of years an employee has worked for the Town without an interruption of more than 18 months. After interruptions of employment of more than 18 months, the total number of years shall reset to zero.

### SUSPENSION

A temporary separation of an employee from his/her position for disciplinary reasons.

### TEMPORARY APPOINTMENT

The appointment of an employee designated to act in a capacity for a limited time period.

### TRANSFER

The assignment of an employee from one position and/or department to a different department and/or position.

## 1.2 - STATEMENT OF PRINCIPLES



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### 1.2.1 - AUTHORITY OF TOWN MANAGER

The Town Manager shall exercise administrative authority over all employees except the Town Attorney and his/her staff.

For the purposes of this Manual, the Town Attorney shall exercise the authority and obligations of the Town Manager in regard to the employees of the legal department.

The Town Manager shall be the final authority relative to the dismissal of an employee with the exception of the Town Attorney and his/her staff.

### 1.2.2 - STANDARDS OF CONDUCT

Town of Payson employees are expected to provide service to the Town and its citizens in the most efficient and honest manner possible.

Employees should refrain from engaging in any conduct, on or off duty, not otherwise protected by law, which could reflect unfavorably on the Town.

Employees must follow the Ethics Policy in Appendix A.

### 1.2.3 - FAIR EMPLOYMENT

The Town of Payson is an equal employment opportunity employer and does not discriminate against applicants or employees who meet all qualifications and requirements of Town service on the basis of race, color, religion, gender, national origin, age, disability or any other status protected by law. The Town is committed to its obligations under State and Federal laws against discrimination and prohibits and will not tolerate retaliation against individuals who oppose unlawful discrimination or participate in investigations concerning allegations of discrimination. The Town also prohibits and will not tolerate harassment of applicants or employees on the basis of race, color, religion, gender, national origin, age or disability.

Employees and other individuals may address concerns or complaints about alleged, perceived or actual discrimination to the Personnel Officer or the Town Manager without fear of retaliation. Complaints of unlawful discrimination shall be reported and thoroughly investigated. All employees must comply with the Town's fair employment policies. Any employee, including managers and supervisors, who violates the Town's policies or laws against discrimination shall be subject to discipline, up to and including termination.

### 1.2.4 - POSITIONS COVERED

These Rules and Regulations shall cover all classified and non-classified employees unless otherwise exempted.

### 1.2.5 - ESTABLISHMENT OF NEW POSITIONS

When a department would like a new position, the Department Head shall forward to the Personnel Officer a description of the duties and responsibilities and recommended pay grade of the position. The Personnel Officer shall, after a study of the duties, responsibilities and qualification requirements, allocate the position to its appropriate pay grade in the pay plan. The position and recommended pay grade shall be submitted to the Town Manager for his/her review and approval. The Town Council must approve the new position before it can be added to the Pay Plan.

### 1.2.6 - ABOLISHMENT OF POSITIONS

The Town Council, following a written staff report may abolish any position in the Town's service which is not established by Arizona law. Employees transferred, demoted or laid off because of the abolishment of positions, shall not have the right of appeal.

### 1.2.7-IMPROPER POLITICAL ACTIVITY



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No person elected or employed by the Town shall orally, in writing, electronically, or otherwise, solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose whatsoever from any Town employee.

Any authorized solicitations shall not be conducted during working hours.

No employee shall make, solicit or receive any contribution to the campaign funds of any candidate for municipal office of the Town of Payson, or take any part in the management, affairs or political campaign of any such candidate, but he/she may exercise any other rights of a qualified elector.

### 1.2.8 - CONFIDENTIAL INFORMATION

Because of the nature of Town business, employees may acquire confidential or sensitive information about the Town, its employees, and/or its citizens. This information shall not be released to anyone other than persons who have a right to know or who are authorized by law or otherwise to receive such information. If any situation arises in which an employee is in doubt, the release of information should be cleared with the employee's supervisor. Caution and discretion in handling and release of confidential information applies to both external and internal disclosure.

### 1.2.9 - EXIT INTERVIEW

All full-time regular employees who separate employment with the Town of Payson for any reason may schedule an exit interview with the Personnel Officer for all final actions of pay, retirement, and insurance.

On or prior to the last day of employment, or upon request of the employee's supervisor, an employee shall return any Town property in his/her possession.

### 1.2.10 - ABANDONMENT OF POSITION

An employee who is voluntarily absent from work without authorization for two (2) or more work shifts may be deemed to have resigned.

### 1.2.11 - REFERENCES

The Human Resources Office or Town Manager shall be the only contacts for job references. Any reference provided by an employee other than the Human Resources Office or Town Manager will be considered a personal reference and the provider will assume all liability for the information provided. No references are to be written on Town letterhead unless they are approved by the Human Resources Office or Town Manager. Without additional signed authorization, the Town will only confirm employment and length of employment with the Town of Payson.

### 1.2.12 - EMPLOYEE RECORDS

The Human Resources Office is the custodian of all official personnel records for current and past employees of the Town of Payson. The employee's file in Human Resources will be the official file for all legal actions, employment references, or any other official inquiries.

### 1.2.13 - USE OF TOWN PROPERTY

Employees shall exercise care in their use of all Town Property. Except as otherwise provided employees shall not request, use, or permit the use of any Town owned or supported equipment, vehicle, facility, labor service, or supplies (new or surplus) for non-Town use.

Town vehicles assigned to an employee may be used for commuting purposes. On-call vehicles may be used for commuting to and from work by the person on call. Except as provide above, no Town vehicle shall be used by any employee for personal use or for commuting purposes.



## **SECTION: 02 – HIRING AND EMPLOYMENT PRACTICES**

### **2.1 - SELECTION PROCESS AND APPOINTMENTS**

Appointments to vacant positions shall be made in accordance with this Manual and applicable State and Federal laws.

If there are no employees with the minimum qualifications for a position, or if the best interests of the Town would not be served due to a lack of qualified applicants for promotion, or if the Town deems it to be in the best interests of the Town to seek additional applicants, then the position shall be filled by open competitive testing.

If a vacancy has not been filled internally through promotion or transfer, an interview board will interview applicants and make a recommendation to the hiring authority of the applicant whose previous education; experience and/or qualifications are most suited to the position. The Town will arrange hotel accommodations for out-of-town interviewees and pay those costs. The Town may reimburse out-of-town applicants for their in-town food expenses one day prior, the day of and the day after the interview. Interviewees that are residents of Payson or surrounding communities within 50 miles will not be reimbursed for any accommodation or food expenses associated with the interview process.

Appointments and promotions shall be based on merit and qualification. Examinations used to aid in the selection of qualified applicants shall consist of techniques which fairly test job qualifications such as achievement and aptitude assessment, written assessment, personal interview, evaluation of daily work performance, assessment centers, work samples or any combination of these or other tests. Physical agility tests and functional capacity assessments may be administered as a part of any examination to the extent permitted by State and Federal law.

The Town Manager or Personnel Officer may check references, obtain fingerprints, and obtain background information regarding each applicant. Such information may include, but is not limited to, information received through the Arizona Department of Public Safety, National Criminal Information Center, credit bureaus (pursuant to the Credit Reform Act), and any other public records. Only persons authorized by State law may have access to criminal history record information.

A conditional offer of employment may be given after completion of background screening.

A formal offer of employment may be given after successful completion of a pre-employment functional capacity assessment, drug testing (if applicable) and background screening.

### **2.2 - APPLICATION PROCESS**

#### 2.2.1 - METHOD OF FILLING VACANCIES

All vacancies shall be filled by one of the following methods:

- Promotion or transfer from within the department having the vacancy.
- Internal posting, to allow existing regular employees and any person on the Layoff List to apply.
- Appointment from current eligibility lists (from external and internal postings).
- Appointment from open competitive eligibility lists (from external and internal postings).
- By provisional appointment.

#### 2.2.2 - PROVISIONAL APPOINTMENTS

In order to provide a continuous level of service not being met due to a vacant position(s) the Town Manager may approve a provisional appointment where there are exigent circumstances requiring a position be filled as expediently as possible. Provisional appointments may be temporary or permanent. Persons provisionally appointed must meet the minimum qualifications of the position, pass pre-employment background investigation and post offer functional capacity assessment.



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Provisional employees may be terminated with no right of appeal prior to completion of a one year probationary period. Any provisional employee, having completed the one year probationary period and having obtained regular employee status, shall receive all of the benefits provided by the Town to its regular employees on a retroactive basis from the date of hire.

Temporary provisional appointments shall not to exceed 90 calendar days. Temporary provisional employees are paid on an hourly basis, do not receive employee benefits, and may be full or part-time.

### 2.2.3 - ANNOUNCEMENT

Unless filled by provisional appointment, all classified positions shall be publicized by advertisement in a newspaper of local circulation, and by posting announcements in Town Hall on official bulletin boards, and by such other methods as Human Resources deems advisable.

### 2.2.4 - APPLICATION FORMS

All application forms and attachments must be complete, shall become the property of the Town, and shall not be returned to the applicant.

### 2.2.5 - DISQUALIFICATIONS

Any application which is incomplete or indicates on its face that the applicant is not qualified may be rejected. Applications may also be rejected if the applicant has made any misstatement of any material factor, or has practiced any deception or fraud in his/her application. Incomplete applications may be returned to the applicant with notice to amend the same, provided that the time limit for receiving applications has not expired.

### 2.2.6 - RECRUITMENT INCENTIVES

To encourage appointment of the most qualified applicants, the Town Manager may offer recruitment incentives to persons offered conditional offers of employment, other than the Town Manager and Town Attorney. The value of such recruitment incentives shall not exceed 10% of the person's starting salary and may include, but are not limited to moving expenses, signing bonuses, and/or additional vacation time. Such incentives must be utilized within twelve months of hire.

## **2.3 - EMPLOYMENT TESTING**

### 2.3.1 - NATURE AND TYPE OF TESTING

Employment selection techniques and testing shall be impartial, of a practical nature, and shall fairly measure the applicant's skills, knowledge and abilities to execute the duties and responsibilities of the position. If a position requires testing, all applicants, internal and external shall be tested. Applicants have up to 15 days to review their test scores after testing.

No question or inquiry shall be made as part of pre-employment testing or application which attempts to elicit information concerning gender, marital/family status, ethnicity, ancestry, national origin, disabilities, political or religious opinions or affiliations of an applicant

### 2.3.2 – VETERAN AND DISABILITY PREFERENCES

Veterans meeting the following criteria will be given a preference of five points:

- separated from active duty under honorable conditions following more than six (6) months of active duty;
- take an employment test which is numerically graded, and receive a passing grade.

Applicants who are disabled and meet the following criteria will be given a preference of five points:

- take an employment test, which is numerically graded, and receive a passing grade.

Spouses or surviving spouses of a veteran who take an employment test, which is numerically graded, and receive a passing grade, shall be given a preference of five points.



2.3.3 - PROMOTIONAL/TRANSFER EXAMINATIONS

Vacancies may be filled by internal promotional/transfer testing if there are employees who meet the minimum qualifications for a position. For the purpose of this subsection, Paid on Call firefighters shall be considered employees.

**2.4 - EMPLOYMENT LISTS**

2.4.1 - ELIGIBILITY LISTS

As soon as possible after the completion of employment or promotional testing, the Personnel Officer shall prepare and keep an eligibility list. The eligibility list shall identify the order of preference for hiring or promotion.

2.4.2 – LAYOFF LISTS

Employees laid-off shall notify the Personnel Officer of their desire to be included on the Layoff List for possible re-hire.

2.4.1- DURATION OF LISTS

Eligibility lists, other than those resulting from continuous testing, shall remain in effect one year from the position fill date. Persons laid off shall remain on the Layoff List for one year from the effective date of the individual’s lay off.

**2.5 - APPOINTMENT**

2.5.1 - CITIZENSHIP / ELIGIBILITY TO WORK IN THE UNITED STATES

All newly-hired employees of the Town must present evidence of their eligibility to work in the United States as required by Federal law. All law enforcement applicants must be United States citizens.

2.5.2 - PHYSICAL AND MENTAL FITNESS

All applicants for Town employment shall be able to perform the essential functions of the job.

2.5.3 – HIRING/SUPERVISION OF RELATIVES

No Town employee shall be in a position where he/she will be hired and/or supervised by a relative at any level of supervision.

For the purposes of this section the term ‘relative’ means:

- Husband, wife, parent, step-parent, brother, sister, step brother, step sister, child, step child, foster child, grandparents, step grandparents, uncles, aunts, nieces, nephews, or mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law.

2.5.4 - LOYALTY OATH

Every employee of the Town shall take and subscribe to the oath or affirmation as prescribed by State Law:

I, \_\_\_\_\_, do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic, and that I will faithfully discharge the duties of \_\_\_\_\_, according to the best of my ability, SO HELP ME GOD or, SO I DO AFFIRM.

**2.6. - PROBATION**

2.6.1 - PERIOD OF PROBATION

In order to satisfy the requirements for regular employment every classified employee shall work satisfactorily for a period of probation. The period of probation for law enforcement officers shall be twelve (12) months after successful



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completion of the required field training. The period of probation for all other employees shall be twelve months from their anniversary date.

One extension of the probationary period, not to exceed the length of the original probation, may be required by the Department Head with the approval of the Town Manager.

During an employee's probationary period, he/she shall be evaluated after six months and again two weeks prior to the end of the probationary period.

### 2.6.2 - APPOINTMENT FOLLOWING PROBATIONARY PERIOD

At least two weeks prior to the end of the probationary period, the supervisor shall submit a performance review to the Personnel Officer through his/her Department Head. An employee receiving a performance rating of "meets standards" or better will be appointed to regular employment.

### 2.6.3 - REJECTION OF PROBATIONER

During the probationary period, an employee may be dismissed, suspended or demoted without cause and without the right of appeal.

## **2.7 - PROMOTION AND TRANSFER**

### Promotion

Upon promotion to another position, an employee shall be placed at a new pay grade at a wage determined with the approval of the Town Manager.

Upon promotion, the employee shall be given a new performance review date effective at the time of promotion.

### Transfer

No employee shall be transferred to a position for which he/she does not possess the minimum qualifications.

Upon notice the employee may be transferred with the approval of the Town Manager at any time from one position to another position in a comparable pay grade. For transfer purposes, a comparable pay grade is one with the same maximum wage. Upon transfer, the employee shall be given a new performance review date effective at the time of transfer and begin serving a six-month probationary period in the new position.

The wage of an employee who transfers to a position in another department where the pay grade is lower than that of his/her former position, may generally remain at his/her present rate of pay if it is within two pay grades of the grade to which he/she transferred.

If two or more persons request a transfer to the same vacant position, the Personnel Officer shall require an examination in the same manner as he/she does for promotional vacancies.

## **2.8 - LAYOFF**

If it becomes necessary to layoff Town employees due to lack of funds, lack of work, or reorganization, the Town Manager shall render final decision as to the layoff. In administering layoff action, total length of service with the Town, job performance, and any other relevant information, including but not limited to, department efficiency and workload shall be taken into consideration.

A regular full or part time employee who is to be laid off shall receive written notice at least ten (10) working days prior to the effective date. A layoff is not a termination and is not subject to appeal under the Town's appeal procedure.



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If within one year of being laid off, the position from which the employee was laid off is refilled, if the laid off employee is still qualified for the position, the laid off employee shall be re-instated at the same pay and accrual rates as before the lay off.



## SECTION: 03 – EMPLOYEE COMPENSATION

### 3.1 – PAY PLAN AND WORK SCHEDULE

#### 3.1.1 - PAY PLAN PREPARATION

The Personnel Officer or Town Manager shall recommend to the Town Council a Pay Plan. The pay plan shall be developed and maintained so that all comparable positions are within the same pay grade.

#### 3.1.2 - REVISION OF THE PAY PLAN

The pay plan may be amended from time-to-time by the Personnel Officer.

#### 3.1.3 - APPLICATION OF RATES

Employees occupying a position shall be paid a salary or wage established for that position under the Pay Plan. A new employee shall start at the first step in the appropriate pay grade unless otherwise approved by the Town Manager.

#### 3.1.4 – PAY PERIOD

Employees shall be compensated on a bi-weekly basis.

#### 3.1.5 - WORK WEEK

The workweek shall consist of 168 hours over seven consecutive 24-hour periods starting at 12:00 a.m. Saturday and ending Friday at 11:59 p.m.

The 9/80 alternative work week begins at 12:00 p.m. Friday and ends at 11:59 a.m. the following Friday.

#### 3.1.6 - WORK PERIOD

A work period shall consist of a fixed schedule of 40 hours worked per week, over a two-week period, corresponding with the bi-weekly pay cycle.

Firefighter’s work period shall be: 24 hours on, 24 hours off, 24 hours on, 24 hours off, 24 hours on, 4 days off. This cycle repeats itself every 9 days. The Town of Payson has designated a 27-day work period for the Fire Department employees assigned to shift work.

The standard work period shall consist of five eight hour days in a workweek. Alternate work schedules may be authorized or required. The Town Manager shall have final authority to authorize and/or require alternate work schedules.

#### 3.1.7 - ALTERNATE WORK SCHEDULES

1. A 4/10 schedule where the employee works four ten hour days.
2. A 9/80 schedule, where an employee works four nine-hour days and one eight hour day in one week; during the following week, the employee works four nine-hour days with one day off. A 9/80 schedule must be worked in accordance with the following:
  - a. The day off is only allowed on Fridays or Mondays.
  - b. All schedules must be approved 2 weeks in advance by the Department Head and the employee to create a 9/80 schedule agreement.

If a holiday falls on the flex day off, the employee will be given another day off during the pay period, usually either the day before or the day after the holiday.

#### 3.1.8 - RETURNING TO FORMER WORK SCHEDULE

Employees who wish to revert to their former work schedule may do so by submitting a written request to their immediate supervisor. If approved, the change shall be effective the week after their flex day off.



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### 3.1.9 – OVERTIME AND COMPENSATORY TIME

The Town of Payson is governed by the provisions of the Fair Labor Standards Act. All hours worked by non-exempt employees in excess of 40 in a work week shall be paid as overtime or compensatory time at one and a half times the employee’s regular rate of pay, except for Firefighters.

Firefighters who in a 27-day period work over 204 hours shall be paid at one and a half times the employee’s regular rate of pay.

The Town Manager or designee shall annually establish a policy delineating when employees whether will be paid overtime or receive compensatory time for overtime, and how many hours of compensatory time may be accumulated. Exempt employees shall not accrue overtime or compensatory time.

Compensatory time will be earned in fifteen minute increments. Under no circumstances shall accrued leave balances be kept “off the books”.

Non-worked hours will not be used for computing paid overtime or compensatory time off.

### 3.1.10 - HOLIDAY PAY

Non-exempt employees working on a holiday will be paid at one-and-one half times his/her regular rate of pay.

Firefighters working on a holiday will be paid for 12 hours at one-and-one half times their regular rate of pay.

### 3.1.11 - HOURS WORKED FOR PURPOSES OF COMPUTING COMPENSATORY/OVERTIME

Hours worked include the following:

- Regularly scheduled working hours; other hours as approved by supervisor.
- Meal periods where the employees are either not free to leave their posts or the time is too short to be useful to employees (i.e., less than 30 minutes).
- On-call time where liberty is restricted.
- Rest periods of 20 minutes or less.
- Training as required by the Town.
- Traveling between work sites or traveling out of town during working hours.
- Paid Time Off
- Holidays
- Jury duty

The following are not considered hours:

- Compensatory Time
- Bereavement Leave
- Meal periods where the employee is freed from duties
- On-call time where an employee's liberties are not restricted.
- Overnight trips, during nonworking hours unless the employee is performing work.
- Training/school time where the employee on his or her own initiative attends independent school after hours.

### 3.1.12 - MERIT INCREASES

All merit increases shall be dependent upon budget availability.

No merit increase shall be made so as to exceed the maximum rate established in the Pay Plan for a position. Merit increases for employees who have reached the maximum pay for their position shall be given as a one time payment equal to the annualized amount of the increase.

Merit increases shall not be automatic, but shall be based upon the employees’ performance evaluation.

If approved, the effective date of merit increases shall be retroactive to the employee’s performance review date.

### 3.1.13 - TEMPORARY DETAIL



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Upon the recommendation of the Department Head and approval of the Town Manager, an employee may be assigned on a temporary basis to work in a higher capacity and shall be paid at the rate of the higher pay grade beginning with the first day of the detail.

### 3.1.14 – OUT OF POSITION DETAIL

Employees who work in a position at a higher grade will be compensated in accordance with departmental policy.

Each department shall establish a policy addressing employees who are working at a higher grade. Such policy shall include, but not be limited to, qualifications required, the compensation and the amount of time the employee must work before the compensation is effective. The department policies shall be subject to funding through the annual budget process.

### 3.1.15 - CLOTHING ALLOWANCES AND UNIFORMS

Clothing allowances and uniform privileges shall be set in the annual budget and administered by each department.

### 3.1.16 - JOB DESCRIPTIONS

The Personnel Officer shall maintain and have on file copies of job descriptions for all positions. The description shall include title, statements of essential functions, examples of work performed, required skills, knowledge and abilities, required experience, and training.

Job descriptions are descriptive only and are not restrictive. It is not intended that a job description give a complete resume of all the specific duties, tasks and responsibilities, but rather to give a general picture of essential characteristics of the position.

### 3.1.17 - POSITION RE-CLASSIFICATION

The Personnel Officer shall, from time-to-time or upon the request of a department head or the Town Manager, review the duties, responsibilities and qualifications of a position or all positions to determine whether the positions are properly classified. The Personnel Officer findings shall be reported to the Town Manager, who will review and approve reclassification of those position(s) found to be improperly classified.

The pay level of reclassified positions shall be set as follows:

1. To a higher pay level: When a position is reclassified to a position of a higher pay grade, the provisions governing rate of pay on promotions shall be used to set the salary of the incumbent.
2. To a position of the same pay level: When a position is reclassified to another position of the same pay grade, the salary of the incumbent shall remain unchanged.
3. To a position of a lower pay level: When a position is reclassified to a position of a lower pay grade, the salary of the incumbent shall be set as follows:
  - a. If the salary in the higher level is above the maximum rate of the lower level, the pay shall be set at the maximum rate of the lower level.
  - b. If the salary in the higher level falls within the range of the lower level, it shall remain unchanged.

## **3.2 - BILINGUAL PAY POLICY**

### 3.2.1 – ELIGIBILITY TO PARTICIPATE

Upon recommendation by the Department Head, as well as the willingness of the employee, the Town Manager shall have the authority to determine the eligibility of the employee to participate in the Bilingual Pay Policy. Also, the Town Manager shall have the authority to determine an employee's continued eligibility for this program. The following is a non-inclusive list of considerations that may be reviewed when determining eligibility: the effectiveness of the employee's bilingual skills; the usefulness of the employee's bilingual skills; and the employee's record of availability when called upon.

### 3.2.2 – REVIEW OF FLUENCY

An objective process by which the level of fluency can be evaluated will be utilized. The Town Manager shall have



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the authority to determine if the employee's level of fluency warrants receiving the monthly stipend.

### 3.2.3 – MONTHLY STIPEND

The Bilingual Pay stipend shall be \$100.00 per month.

### 3.2.4 – APPLICABILITY

The names and contact information of all Town employees who receive the Bilingual Pay stipend shall be available to all Town of Payson departments. When translation is needed, departments are encouraged to seek availability of those employees on the list from within their own department prior to contacting employees from other departments.

## **3.3 - PERFORMANCE REVIEWS**

### 3.3.1 - PURPOSE

The purpose of the performance review system is to evaluate the performance of employees.

### 3.3.2 – APPLICABILITY

Performance reviews shall be conducted at least annually for all regular employees.

### 3.3.3 – ADMINISTRATION

The Personnel Officer shall administer the performance review system.

### 3.3.4 – RATING/REVIEWING AUTHORITY

The rating authority shall be that person who directly supervises the work of the employee being rated. In the cases of the Town Manager and Town Attorney, the rating authority shall be the Town Council.

The reviewing authority shall be the Department Head.

### 3.3.5 – RETENTION OF REVIEWS

Completed copies of all performance reviews shall be submitted to the employee and the Human Resources Department, and shall be filed in the employee's personnel file.



## **SECTION: 04 – SEPARATION OF EMPLOYMENT, EMPLOYEE DISCIPLINE, AND DUE PROCESS**

### **4.1 – RESIGNATION**

#### 4.1.1 - RESIGNATION OR RETIREMENT

As a matter of professional courtesy, employees are expected to give at least two (2) weeks notice prior to the effective date of resignation or retirement to enable the Town to make arrangements for filling the position.

All employees are asked to notify their supervisor in writing as soon as possible of their intent to resign or to retire.

Employees shall notify their supervisor within two (2) weeks of accepting another job so that the supervisor can begin the transition process within the department.

#### 4.1.2 - WITHDRAWAL OF RESIGNATION

Any employee who has resigned in writing or orally may, prior to vacating the position and with the consent of the affected Department Head, Personnel Officer and the Town Manager, withdraw his/her resignation.

#### 4.1.3 - CONSTRUCTIVE DISCHARGE; PROCEDURE BEFORE RESIGNING DUE TO UNPLEASANT WORKING CONDITIONS

Employees are encouraged to communicate to the Town whenever they believe working conditions may become intolerable and may cause resignation. Under A.R.S. §23-1502, Arizona Revised Statutes, an employee may be required to notify an appropriate representative of the Town (either the Personnel Officer or the Town Manager) in writing that a working condition exists that the employee believes is intolerable, that will compel the employee to resign or that constitutes a constructive discharge, if the employee wants to preserve the right to bring a claim against the Town alleging that the working condition forced the employee to resign.

Under the law, an employee may be required to wait for fifteen calendar days after providing written notice before the employee may resign if the employee desires to preserve the right to bring a constructive discharge claim against the employer. An employee may be entitled to paid or unpaid leave of absence of up to fifteen calendar days while waiting for the employer to respond to the employee's written communication about the employee's working condition.

Employees who believe they are being forced to resign due to unlawful working conditions or treatment, should submit a written letter or memo to the Personnel Officer to notify the Town of the problem. If they believe they cannot continue to work while waiting for the Town to respond, they may be entitled to a leave of up to 15 days. The Town's policy is that such a leave will be unpaid.

### **4.2 – DISMISSAL, DEMOTION, AND SUSPENSION**

#### 4.2.1 – REASONS FOR DISCIPLINE OR DISMISSAL

The tenure of every employee shall be contingent upon acceptable conduct and satisfactory performance of duties. Failure to meet such standards of conduct and work performance for any of the following reasons is sufficient grounds for discipline or dismissal. The list below is not all-inclusive; other conduct by an employee may also constitute reasons for discipline or dismissal.

1. The employee is incompetent or inefficient in the performance of his/her duties;
2. The employee has been abusive in his/her attitude, language, conduct or has caused physical harm or injury to employees or the public;



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3. The employee violates any reasonable direction and/or written departmental regulation given by the supervisor;
4. The employee violated the substance abuse policy;
5. The employee takes anything of value in exchange for providing a favor or better treatment to another person;
6. The employee is convicted of a felony;
7. The employee has made false statements, written or oral, attempting to conceal any past or present criminal activity;
8. The employee fails to notify Human Resources of being arrested or charged with a criminal offense;
9. The employee fails to cooperate with any internal investigation by the Town and the failure does not result from the employee's invocation of his/her rights;
10. The employee willfully or recklessly causes damage to public property or waste of public resources;
11. The employee has been absent without leave, or has failed to report after a leave of absence has expired, or after such leave of absence has been disapproved, revoked, or cancelled by the Town Manager;
12. A non-exempt employee engages in outside business activities on Town time;
13. An employee uses Town property not otherwise available to the public for personal use;
14. The employee has engaged in improper political activities, as prohibited by this Manual;
15. The employee deliberately gave incorrect information on his/her employment application;
16. The employee has been chronically tardy and/or failed to maintain prescribed working hours;
17. The employee has committed any action, on or off the job, which reasonably tends to bring discredit to the Town service;
18. The employee has failed to meet the terms of a disciplinary probation period;
19. The employee has violated any provision of this Manual; or
20. The employee has committed any other conduct of equal gravity to the reasons enumerated in this rule.

### 4.2.2 – DOCUMENTATION OF EMPLOYEE DISCIPLINARY ACTION

It is the responsibility of the department head and immediate supervisor to clearly document all relevant facts and evidence of employee misconduct or poor job performance. Copies of these reports must be provided to the Personnel Officer for review. All disciplinary action shall be in writing. The employee shall be requested to sign the notice, indicating only that the action has been discussed with him/her. Signing does not constitute an act of admission on the part of the employee. Should an employee refuse to sign the disciplinary action, the Department Head shall write the words "Refused" upon the notice. The Department Head shall submit a complete report regarding the contact with the employee and the procedure followed to the Personnel Officer.

### 4.2.3 - SUSPENSION

The Department Head, with the written consent of the Personnel Officer and approval of the Town Manager, may suspend an employee from his/her position at any time for a disciplinary purpose. Suspension without pay shall not exceed thirty calendar days in any twelve-month period.

Written notice of any suspension shall be given to the employee prior to the effective date of the suspension, and a copy filed with the Personnel Officer.

No employee shall be permitted to use any paid leave during a disciplinary suspension.

### 4.2.4 -DEMOTION



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Written notice of any demotion shall be given to the employee prior to the effective date of the demotion, and a copy filed with the Personnel Officer.

### Involuntary Demotion

The Department Head, with the written approval of the Town Manager, may demote an employee for any reason listed in 4.2.1. No employee shall be demoted to a position for which he/she does not possess the minimum qualifications. This notice to the employee must be given before the effective date of the demotion. A copy of the demotion notice must be filed in the employee's personnel file.

An employee who is demoted for disciplinary reasons to a lower pay grade for which the maximum rate of pay is less than the employee's most current rate of pay, shall be paid at a rate approved by the Personnel Officer, which shall not exceed the maximum rate for the lower pay grade. The demoted employee shall be given a new performance review date which will be the date of the demotion, and will receive a performance evaluation at the end of the new probationary period. The employee may be considered for a performance review one year from the effective date of the demotion.

A promoted employee who fails to meet the minimum job requirements shall be demoted to that position and rate of pay held at the time of promotion, assuming there is a vacant position available. In the event there is not a vacant position available the employee shall be laid off and placed on a lay-off list

### Voluntary Demotion

Upon request of the employee, demotion may be made to a vacant position. No employee shall be demoted to a position for which he/she does not possess the minimum qualification.

An employee who voluntarily requests a demotion shall be paid at a rate recommended by the Personnel Officer and approved by the Town Manager, but which shall not exceed the maximum rate of pay at the lower pay grade. The employee will not be allowed to compete in promotional examinations for a period of ninety (90) days.

### 4.2.5 - DISCIPLINARY PROBATION

An employee may be placed on disciplinary probation for any violation of 4.2.1. During such disciplinary probation, the employee shall accrue vacation and sick leave time. The employee shall not be allowed to compete in promotional examinations while on disciplinary probation. Persons placed on disciplinary probation may be terminated for failure to meet the terms of the disciplinary probation.

An action plan shall be provided for all employees placed on disciplinary probation.

### 4.2.6 - NOTICE OF DISCIPLINARY ACTION

All disciplinary actions, including written reprimands, demotions, suspensions, disciplinary actions or dismissals must be reviewed and approved by the Personnel Officer. Any disciplinary action shall be made by notifying the employee of the action by his/her supervisor or Department Head, pending service of notice. Such written notice shall be made within fourteen (14) calendar days of the incident(s) or the completed investigation of the incident(s), whichever is longer.

The notice shall include:

- a. A statement of the nature of the disciplinary action;
- b. The effective date of the action;
- c. A statement of the act(s) or omission(s) upon which the action is based; and any rule of which the violation occurred.
- d. A statement advising the employee of his/her right to appeal the action.

A copy of the disciplinary letter and subsequent action shall be filed with the Personnel Officer to be placed in the employee's personnel file.

### 4.2.7 – NOTICE OF DISMISSAL

All dismissals shall be reviewed by and approved by the Town Manager. The employee's Department Head shall conduct a pre-dismissal interview with the employee. After giving the employee a chance to be heard at the pre-



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dismissal interview, the Department Head shall personally serve a Notice of Dismissal upon the employee. The Notice shall be in the same form as a Notice of Disciplinary Action. If the employee fails to appear at the pre-dismissal interview, the Notice shall be mailed by registered mail to the employee.

The provisions of this subsection shall not apply to the Town Manager and/or Town Attorney if either has an employment contract with the Town, the provisions of which conflict with this policy, or if either is vested under a different policy.

### 4.3 – TOWN MANAGER AND TOWN ATTORNEY PROCEDURES

The Town Manager and Town Attorney, upon expiration of the 12 month probationary period, may only be removed for cause upon a majority vote of the full membership of the Town Council, or a total of four (4) votes.

Upon a majority vote of the full membership of the Town Council for the dismissal of the Town Manager or Town Attorney for cause, such officer may request a hearing as otherwise provided in this Personnel Policy, in conformity with the provisions in this Section 4. Such officer is entitled to be represented by counsel at his/her own expense. A request for hearing must be made in writing and delivered to the Personnel Officer within ten (10) calendar days following the date of the vote by the full Town Council for dismissal. A hearing date shall be set no less than ten (10) calendar days nor more than thirty (30) calendar days from the date that the request for hearing is delivered to the Personnel Officer.

Not later than five (5) calendar days following the conclusion of the hearing, the Personnel Hearing Officer shall render a written decision, which shall specifically state the case for termination and which shall include findings and conclusions. If the decision of the Personnel Hearing Officer is to uphold the decision of the Town Council for termination with cause, the termination of the Town Manager or Town Attorney shall be final, except for appeals to the courts. If the decision of the Personnel Hearing Officer is in conflict with that of the Town Council, the Personnel Hearing Officer's decision and recommendation shall be forwarded to the Town Council and shall be placed on the agenda for the next subsequent Town Council meeting for reconsideration. If the Town Council then casts a vote of 6/7 of the full membership of the Town Council for dismissal, then the Town Manager or Town Attorney shall be dismissed with no further right of appeal, except for the courts. If the Town Council does not cast vote for 6/7 of the full membership of the Town Council for dismissal, the Town Manager or Town Attorney shall be immediately reinstated with full back pay and benefits.

### 4.4 - COMPLAINT AND GRIEVANCE PROCEDURES

#### 4.4.1 - DEFINITION OF COMPLAINT AND GRIEVANCE

A grievance or complaint is a dispute or disagreement as to (1) the interpretation or application of this Manual or the written rules and procedures of any Town department or (2) any matter pertaining to harassment or discrimination against an employee because of race, color, religion, gender, marital status, age, national origin, or physical or mental handicap, or (3) action(s) taken by a supervisor which results in loss of pay, written reprimand, suspension or demotion.

If, at any level of supervision above the first level, the employee decides to formalize the complaint in writing, the employee shall be considered as having a grievance.

#### 4.4.2 - PURPOSES OF COMPLAINT AND GRIEVANCE PROCEDURES

- To assure employees that their complaints, grievances and recommendations will be considered fairly, rapidly, and without reprisal, coercion or discrimination.
- To determine what is right, rather than who is right, i.e., provide for the objective consideration of employee problems.
- To establish uniform policies and procedures in handling all formal employee complaints and employee grievances.
- To outline the respective rights and obligations of all employees in hearing and resolving complaints and grievances on matters for which an appeal or hearing is not provided by other regulations.



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- To provide a systematic means of obtaining further consideration of problems after every reasonable effort has failed to resolve them through discussion.
- To provide that all complaints and grievances shall be settled as near as possible to the point of origin.

### 4.4.3 - PROCEDURES FOR THE INITIATION OF THE EMPLOYEE COMPLAINT PROCESS

No complaint shall be considered if a period of thirty (30) calendar days has passed after the facts upon which the complaint is based first occurred or first can reasonably be expected to have become known to the employee. The parties can mutually agree to extend the time limits referred to in any one of the grievance stages other than the initial stage.

If an employee has a complaint, it must first be discussed with the immediate supervisor. Every effort shall be made to adjust all complaints on an informal basis between the employee and the immediate supervisor. The supervisor shall notify the Department Head when a complaint is presented so that his/her advice and counsel may be obtained and the complaint resolved. In cases that warrant further discussion, the Department Head may solicit the Personnel Officer or an appropriate representative for recommendations. The complainant shall be given time away from his or her duties to present the complaint to the supervisor. The complainant and/or his/her representative shall be allowed a reasonable time to present the complaint. The complainant's supervisor or designee shall be given three working days to give the employee a written reply.

### 4.4.4 - PROCEDURE FOR THE INITIATION OF THE EMPLOYEE GRIEVANCE PROCESS

No employee grievance shall be considered if a period of thirty (30) calendar days or more has elapsed from the date in which a complaint can be filed.

The employee may initiate the grievance procedure by filing a letter of grievance with the immediate supervisor and providing copies of the grievance to the Department Head, Personnel Officer and the Town Manager. The formal letter of grievance must contain the following information: 1) Name and classification of the aggrieved employee; 2) Grievance filing date; 3) Nature and date of the grievance; 4) Corrective action requested and reasons therefor; 5) Summary of efforts made to resolve the grievance informally; 6) Additional information pertinent to the grievance.

Employees whose complaint alleges a discriminatory practice should consult the Personnel Officer prior to filing the letter of grievance.

An employee who does not have regular status and is suspended pending termination or who has been terminated does not have a right to file a grievance.

If the employee grievance is based on a suspension or demotion, the Town Manager must, within ten working days, review the grievance and either make a written statement outlining the Town's position or refer the grievance to the Personnel Hearing Officer.

All other grievable matters will be appealable only as far as the Town Manager. The Town Manager or an appointed representative will, within ten working days, review the grievance and appeal, and the Town Manager will issue a written decision on the appeal. This decision shall be final.

## **4.5 - APPEAL PROCESS**

### 4.5.1 - RIGHTS

Any employee with right of appeal shall have the right to appeal to the Personnel Hearing Officer all timely appeals related solely to any employment action resulting in termination, loss of pay, written reprimand, suspension, demotion, or probation related sanctions of regular employees.

Notwithstanding any other provision or procedure to the contrary, the following shall be afforded any regular full time employee entitled to a hearing under these rules. Seasonal and Temporary employees are not eligible.

- Written notice of the specific grounds for discipline.
- The disclosure of evidence supporting the discipline imposed.
- The opportunity to confront and cross-examine adverse witnesses called by the Town at a scheduled hearing.



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- The opportunity to be heard in person and to present evidence at a scheduled hearing.
- The opportunity to be represented by counsel.
- A written statement by the Personnel Hearing Officer or other fact finders as to the evidence relied upon and the reasons for the determination made by it.

### 4.5.2 – REQUIRED NOTICE

An appeal may be taken by filing a written appeal within ten (10) calendar days after receiving notification of intended discipline. A verbal or oral appeal (not in writing), or a written appeal filed anywhere other than with the Town of Payson shall be invalid and of no force and effect.

Upon receipt of a written appeal, the Personnel Officer shall immediately inform the Town Council, Town Manager, Town Legal Department, the Personnel Hearing Officer and such other persons or officers named or affected by the appeal or the filing of same.

Form and content of appeal:

1. Shall be in writing
2. Shall be executed by the employee in the presence of a notary public, attesting that the appeal is made in good faith and upon the personal knowledge of the employee;
3. Shall be directed to the Personnel Hearing Officer in care of the Personnel Officer and shall be filed with the Town of Payson.
4. Shall clearly explain the matter to be appealed;
5. Shall set forth a statement of the action desired by the employee; and
6. Shall set forth the reasons for the action desired and requested by the employee.

The appeal may be handwritten or typed and need not be in formal legal pleading form so long as it conforms to the requirements contained herein.

Upon receipt of an appeal, the Personnel Hearing Officer shall notify the Personnel Officer of the date set for a hearing on the appeal not less than ten (10) calendar days, nor more than thirty (30) calendar days from the date of receipt of the appeal.

The Personnel Officer shall provide written notice to all affected parties of the date, time and place of the hearing at such place as the Personnel Hearing Officer shall prescribe. In addition, notice shall be provided to the Town Manager and Town of Payson Legal Department. Proof of notice to all individuals shall be documented in the Town's records.

### 4.5.3 – HEARING PROCEDURES

The employee shall appear personally, unless physically unable to do so, before the Personnel Hearing Officer at the time and place scheduled for the hearing on appeal.

The employee may be represented by any person (other than the Personnel Hearing Officer) or attorney as the employee may select, and may present relevant oral or documentary evidence. However, in the event that the employee chooses to be represented by an attorney at the hearing, the employee must give notice, at least ten (10) calendar days prior to the hearing, to the Personnel Hearing Officer of his/her intention to be represented by an attorney at such hearing. In that event, the Personnel Hearing Officer shall immediately notify the Town of Payson Legal Department so that arrangements may be made for the Town to be represented by legal counsel at the hearing.

In the event the employee does not intend to be represented by an attorney at the hearing, the Town may be represented by the Personnel Hearing Officer or other employee or counsel chosen by the Town of Payson Legal Department.

The conduct of the hearing shall be directed by the Personnel Hearing Officer with due regard to the rights and privileges of the parties appearing before him/her, but need not be conducted in accordance with judicial rules of evidence. Each party shall be allowed to present evidence and cross-examine witnesses. The hearing shall be closed unless the employee requests in writing that the hearing be conducted in an open, public meeting forum.

The Personnel Hearing Officer shall, within ten (10) days after the conclusion of the hearing, render "Findings and Recommendations" to the Town Council.



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Such “Findings and Recommendations” shall be in writing; shall describe the evidence relied upon by the Personnel Hearing Officer; shall state the reasons for the Personnel Hearing Officer’s determination; and shall be advisory only to the Town Council.

Copies of such “Findings and Recommendations” shall also be provided to the affected parties, the Town of Payson, the Town Manager, and the Town of Payson Legal Department.

### 4.5.4 - COUNCIL ACTION

The Council shall review the Personnel Hearing Officer’s “Findings and Recommendations” within thirty (30) days from the date of such “Findings and Recommendations” and may affirm, reverse, or modify the “Findings and Recommendations.”

### 4.5.5 - STATUS OF TERMINATED EMPLOYEE PENDING APPEAL

A terminated employee shall not be permitted to occupy his/her position pending the appeal process.



**SECTION: 05 – ATTENDANCE AND LEAVE PROVISIONS**

**5.1 - ATTENDANCE, LEAVE, AND BENEFITS**

5.1.1 - LEAVE PROCEDURE

All requests for leaves of absence with pay shall be made to the Department Head. All requests shall be submitted in advance of the beginning date of the leave (except requests for unanticipated sick leave or unanticipated Family and Medical Leave which shall be submitted for approval at the earliest possible time) and the duration and kind of leave shall be recorded on the daily attendance form. Signed leave requests will be attached to the daily attendance forms.

5.1.2 - LEAVE OF ABSENCE WITHOUT PAY

The Town Manager may grant a regular employee a leave of absence without pay for not more than three months, and may grant a probationary employee a leave of absence without pay for not more than one month. No such leave shall be granted except upon written request of the employee, setting forth the reason for the request, and the approval shall be in writing. Upon expiration of a regularly approved leave, or within 10 calendar days after notice to return to duty, the employee shall be reinstated in the position held at the time leave was granted. Failure on the part of an employee on leave to report promptly upon expiration of his leave, or within 10 calendar days after notice to return to duty, shall be cause for discharge. The Town Manager may extend the leave with a second written request from the employee.

5.1.3– PAID TIME OFF (PTO)

A. Accrual

In lieu of vacation pay and sick pay, the Town of Payson offers its regular employees Paid Time Off. All regular employees who work more than 20 hours per week (for Fire Department Shift employees, those working more than 1,456 hours per year on an annualized basis) are eligible to receive Paid Time Off. Part time employees are entitled to Paid Time Off on a pro-rata basis.

Paid Time Off is accrued based upon the employee’s length of service with the Town in accordance with the Table below.

General Employees:			Fire Department Shift Employees:			
Service Yrs.	Accrued Hrs./Year	Accrued Hrs./Pay Period		Service Yrs.	Accrued Hrs./Year	Accrued Hrs./Pay Period
0-2	176	6.77		0-2	254.4	9.78
3	184	7.08		3	266.4	10.25
4	192	7.38		4	278.4	10.71
5	208	8.00		5	302.4	11.63
6	216	8.31		6	314.4	12.09
7	224	8.61		7	326.4	12.55
8	232	8.92		8	338.4	13.02
9	240	9.23		9	350.4	13.48
10	248	9.54		10	362.4	13.94
11 or more	256	9.85		11 or more	374.4	14.4

An employee hired on or before the first day of any pay period shall accrue Paid Time Off from the first day of that pay period. An employee hired after the first day of any pay period shall accrue vacation from the first day of the next pay period.



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If an employee transfers within the Town, the employee's accrued and accumulated Paid Time Off shall also transfer.

Paid Time Off shall not accrue while an employee is on an unpaid leave of absence, including unpaid FMLA leave. Paid holidays during Paid Time Off shall not be charged as Paid Time Off. Paid Time Off shall accrue during the first thirty (30) days an employee is on Worker's Compensation leave.

### B. Use Procedures

In the case of illness of the employee or persons dependent on the employee or other emergency, an employee shall notify his/her supervisor of the use of Paid Time Off as soon as is reasonably possible.

The following procedures shall be followed for all uses of Paid Time Off except illness or other emergency:

1. Employees shall schedule the use of Paid Time Off in advance of taking Paid Time Off and are encouraged to work with their supervisor to minimize work disruption when possible;
2. Paid Time Off shall be approved in advance by the Department Head if requested by an employee and the Town Manager if requested by a Department Head. The Town Manager and the Town Attorney shall notify the Town Council prior to using Paid Time Off; and
3. Signed Paid Time Off request forms must be attached to daily attendance forms when Paid Time Off is taken.

Employees may use Paid Time Off only after they have actually accrued Paid Time Off.

For non exempt employees, Paid Time Off shall be taken in increments of one-quarter hour. For exempt employees, Paid Time Off shall be taken in increments of days (with hours corresponding to the employee's normal work schedule).

Employees may not request a cash payment in lieu of using Paid Time Off.

### C. Transfer

Paid Time Off may be transferred from one employee to another on an hour for hour basis if an emergency situation exists, both employees agree in writing to the transfer, and the transfer is approved by the Personnel Officer.

### D. Carryover, Payout, Separation

General Employees:

At the end of each calendar year, if an employee has more than 480 hours of Paid Time Off, the Town will pay out the first 96 hours above 480 at one half the employee's rate of pay. After such payout, employees will be allowed to carry forward a maximum of 720 hours of Paid Time Off. *(For the year ending December 31, 2009, 192 shall be substituted for 96. See Resolution 2456 rolling over unused sick time in lieu of payment.)*

Upon separation, employees will be paid out at their full rate for the first 240 hours of Paid Time Off. All Paid Time Off between 241 and 816 will be paid out at half rate.

Fire Department Shift employees:

At the end of each calendar year, if a fire department shift employee has more than 672 hours of Paid Time Off, the Town will pay out the first 134.4 hours above 672 at one half the employee's rate of pay. After such payout, fire department shift employees will be allowed to carry forward a maximum of 1032 hours of Paid Time Off. *(For the year ending December 31, 2009, 268.8 shall be substituted for 134.4. See Resolution 2456 rolling over unused sick time in lieu of payment.)*

Upon separation, fire department shift employees will be paid out at their full rate for the first 360 hours of Paid Time Off. All Paid Time Off hours between 360 and 1166.4 will be paid out at half rate.

### E. Exempt Employee Personal Days

Exempt employees shall be given three (3) days of personal leave per calendar year. Such leave is not cumulative and will be forfeited if not used during the calendar year.

*Notes re PTO conversion: upon approval of this section, all existing employee vacation and sick time will be converted to Paid Time Off.*



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### 5.1.4 - HOLIDAYS

A. For all employees not mandated to work a 4/10 schedule (four ten hour days) the following eight hour holidays are to be observed:

New Year's Day	January 1
Martin Luther King Jr. Day	3rd Monday in January
Presidents Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November and the following Friday
Christmas Day	December 25

When a holiday falls on a Saturday, the preceding Friday shall be observed. When a holiday falls on a Sunday, the following Monday shall be observed.

Public safety and other essential service employees may be required to be on duty on holidays.

- B. If the Town Manager mandates a 4/10 schedule (four ten hour days per week) for a group of employees, notwithstanding the foregoing or Section 2, Rule 1.7, the following provisions shall apply:
- 1) Prior to the beginning of each calendar year, the Personnel Officer, with approval of the Town Manager, shall designate eight paid holidays (from the list of paid holidays above) which shall be the paid holidays for the employees who are mandated to work a 4/10 schedule.
  - 2) On each of the eight holidays, employees mandated to work a 4/10 schedule shall receive ten hours of holiday pay.
  - 3) Such eight holidays (ten hours each) shall constitute commensurate time off in lieu of 10 paid holidays (eight hours each) the employees would be entitled to if they were working a traditional 5/8 day schedule.

### 5.1.5 - JURY AND WITNESS DUTY

Employees shall be given time off with pay when subpoenaed as jurors or witnesses in any municipal, county, state, or federal court. Court leave does not apply to employees who are plaintiffs or defendants in non-job related civil actions or who are defendants in non-job related criminal actions. Employees will receive their regular rate of pay provided that they return any daily compensation received (excluding mileage) to the Town. Employees will be asked to provide documentation in the form of the court summons when requesting court leave.

### 5.1.6 - BEREAVEMENT LEAVE

Upon the death of an immediate family member, employees will be allowed the following paid leave: in the state three (3) days; out of state five (5) days. Any additional time requested by an employee will be charged to paid time off (PTO).

### 5.1.7 MILITARY LEAVE

Any employee who presents official orders requiring attendance for a period of training or other active duty as a member of a military branch of the United States or the National Guard is entitled to military leave for a period or periods not to exceed 11 working days, plus four (4) weekend days, in any one (1) calendar year. The employee must show proof of orders to report for such duty training. Employees will be allowed to retain all earnings from such service completed on Town time. If an employee is called up for a longer period than the allowed leave previously stated, the employee will be restored to the same job. The Town follows the Uniformed Services Employment and Re-employment Act of 1994 (USERRA). See Appendix B.

Regular employees entering active military service of the United States, drafted into the service, or who voluntarily enlist, will be granted a leave of absence without pay to extend for 90 days beyond the date of termination from active military service. The employee must inform the Human Resources office during this 90 day period of intent to return to employment with the Town. Upon returning to work, the employee will be restored to the same job or a job with



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equivalent status, pay, benefits, and other employment terms if the employee remains able to perform the essential functions of the job.

### 5.1.8 - SEASONAL EMPLOYEES

Seasonal Employees are not eligible to receive employee benefits.

## **5.2 - FAMILY AND MEDICAL LEAVE ACT POLICY**

### 5.2.1 - POLICY

The Family and Medical Leave Act of 1993 (FMLA) allows eligible employees and requires the employer to grant up to 12 workweeks of paid and/or non-paid leave for:

- 1) The birth and care of a newborn child or placement of a child for adoption or foster care;
- 2) The care of the employee's spouse, child or parent with a serious health condition; and
- 3) For a serious health condition that makes the employee unable to perform the essential functions of the employee's job.
- 4) 26 weeks of leave to care for a family member who is injured while on active duty; and
- 5) 12 weeks of leave for urgent needs related to a family member's current active military duty or a call to active military duty (once this provision of the FMLA is implemented)

An employee may, at his/her discretion, use all accrued paid leave prior to requesting FMLA leave. If leave is requested and approved as FMLA, qualifying employees will be required to use hour for hour accrued PTO during FMLA leave.

Any Family and Medical leave entitlement remaining after the use of all paid time off shall be considered non-paid Family and Medical leave.

### 5.2.2 - ELIGIBILITY

An eligible employee is one who has been employed by the Town of Payson for at least twelve (12) months (not necessarily continuously) and has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.

Exempt employees shall be presumed to have met the 1,250 hours of service required for eligibility if they have worked for the employer for at least 12 months immediately preceding the commencement of the leave.

### 5.2.3 - ADVANCED NOTICE REQUIREMENT

The employee shall provide Human Resources with at least thirty (30) days advance notice if the leave is foreseeable. If the leave is not foreseeable, the employee shall notify Human Resources within two (2) business days after learning of the need for leave.

Notice must include the reason for the leave as well as the anticipated duration of the leave. Employees will be required to complete a Certification by Physician or Practitioner statement within two (2) weeks after requesting or taking FMLA leave, which shall include all relevant information needed to determine eligibility under FMLA.

### 5.2.4 - JOINT EMPLOYMENT

A husband and wife who are both employed by the Town of Payson are permitted to take only a combined total of 12 weeks of leave during the twelve month period measured backwards over the immediately preceding 12-month period from the date an employee used any FMLA leave if they are taking leave for the birth or adoption of a child or to care for a sick parent.

### 5.2.5 - CONTINUED BENEFITS COVERAGE

During FMLA leave, the Town of Payson will maintain the employee's coverage under any group health plan on the same conditions as the coverage would have been provided if the employee had been continuously employed during the leave period with the employee continuing to pay his/her share of the benefit premiums.



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When an employee is on unpaid FMLA leave, Human Resources shall notify the employee of the employee's share of the benefit premiums. If the employee's share of the premiums is more than 30 days late, the Town shall not be obligated to continue to pay the Town's share of the coverage. The Town shall give the employee written notice at least 15 days in advance of stopping premium payments for the employee.

An employee may choose not to retain health insurance coverage during unpaid FMLA leave, but is entitled to be reinstated on the same terms as prior to taking the leave without any qualifying period or prequalification conditions. Employees on unpaid Family and Medical Leave do not accrue benefits except PTO.

Service credits for employees on probation will not accrue during FMLA leave. However, an employee who takes FMLA leave will not lose any accrued service credits.

### 5.2.6 - RETURN TO WORK

An employee who returns to work for at least 30 calendar days is considered to have "returned" to work. Should the employee fail to return to work after FMLA leave, the Town of Payson is entitled to recovery of all benefit premiums paid by the Town of Payson during any unpaid leave period.

Employees will be required to provide medical certification from their health care provider attesting that they are able to resume work in accordance with the minimum job qualifications for the position before they are permitted to return to work.

The failure of an employee to return to work upon the expiration of a FMLA leave will subject the employee to immediate termination.

### 5.2.7 – COMPLETE INFORMATION

Refer to Appendix C for complete information and forms for FMLA.

## **5.3 - WORKERS' COMPENSATION LEAVE**

### 5.3.1 - STATE LAW

Employees are covered by the Town as defined in the Arizona State Workers' Compensation Act against job related injuries or illness arising out of and in the course of Town employment.

### 5.3.2 - DEFINITION

If an employee is absent from work as a result of any job-related injury or illness that is covered under the Arizona State Workers' Compensation Act, the absence is considered workers compensation leave. Employees not meeting this definition will not be eligible for benefits as described within this policy.

### 5.3.3 - REPORTING REQUIREMENTS

An employee must immediately report every job related injury or illness, regardless of severity, to his or her supervisor. The supervisor must submit a "Supervisors Report of Industrial Injury" (obtained from Human Resources) to the Personnel Officer within 24 (twenty-four) hours. If the incident results in death, the Town Manager shall be notified immediately. Any delay in the reporting of a job related injury or illness to the employee's supervisor and/or the Personnel Officer, as described in the process above, may result in appropriate disciplinary action.

### 5.3.4 - MEDICAL CERTIFICATION REQUIREMENTS

Employees who suffer a job related injury or illness will be required to provide to Human Resources a certification from their health care provider indicating work status. Updated certifications will be required on a regular basis as permitted by law.

The employee must return to work immediately after a doctor's release has been obtained or he/she may be subject to disciplinary action up to and including termination.

### 5.3.5 - SCHEDULE OF BENEFITS



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The schedule of benefits as described within this section shall apply to all employees.

For absences of one (1) to seven (7) calendar days due to job related injury or illness arising out of and in the course of Town employment, employees will receive their regular pay from the Town without loss of accrued PTO, compensatory time, or personal leave.

For absences over seven (7) calendar days and beginning on the eighth day of absence, employees will be compensated by the Town up to 1,040 total hours, including those used in the first seven days, on a regular biweekly payroll cycle, for the difference between compensation in accordance with the Arizona Workers' Compensation Act and 100% of their gross salary.

For absences beyond 1,040 hours, the Town may continue to supplement Arizona Workers' Compensation payments up to 100% of the gross salary if the employee provides medical evidence that there is a reasonable likelihood that the employee will be able to return to his/her position within three (3) months.

Employer contributions shall be subject to applicable taxes, benefit deductions, and other applicable withholdings.

If the job-related injury or illness continues beyond the thirteenth (13th) calendar day, compensation shall be computed by the workers' compensation insurance carrier, in accordance with the Arizona Workers' Compensation Act, and made retroactive to the date of injury or illness in accordance with state law. This retroactive payment to the employee will result in an over payment for the first seven (7) days of workers' compensation leave as the employee will have already received payment for 100% of his/her salary from the Town. This duplicate payment received by the employee from the workers' compensation carrier for the first seven (7) days of absence shall be turned over to the Town. If the employee does not voluntarily comply with this provision, the Town reserves the right to collect the gross amount equal to Workers' Compensation payments made to the employee for the first seven days of Workers' Compensation leave from future payments to the employee, or any other method as may be suitable for the collection of said amount.

Employees who are on a continuous leave of absence and who are receiving workers' compensation benefits shall continue to accrue PTO for a period not to exceed thirty (30) calendar days after the date of the job related injury or illness.

### 5.3.6 - LIGHT DUTY

Light duty shall be defined for purposes of this policy to mean a temporary work assignment for employees as authorized by an appropriate work release form. Light duty positions are subject to available duties at the discretion of the Department Head and the Personnel Officer and may or may not be in the same or similar position as held by the employee prior to the job related injury or illness. Light Duty may begin or end at the discretion of the Department Head.

Unless the employee has been placed on FMLA status, an employee's refusal to return to light duty work restrictions may be grounds for disciplinary action up to and including termination. After thirty (30) calendar days from the date of a job-related injury or illness, employees who are working in a light duty assignment shall have their PTO prorated based on the portion of the 40 hour week the employee is working.

If an employee is using FMLA leave concurrently with workers' compensation leave and the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a light duty job but is

presently unable to return to the same or equivalent job, the employee may decline the employer's offer of light duty job. As a result the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the 12 week entitlement is exhausted.

## **5.4 - RETIREMENT BENEFITS**

### 5.4.1 - EMPLOYEE RETIREMENT BENEFIT

All non Public Safety employees who work twenty hours a week for twenty weeks or more participate in a Defined Benefit Retirement Plan through the Arizona State Retirement System (ASRS).



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A Defined Benefit Retirement Plan for Public Safety employees (not including Paid on Call firefighters) is maintained with the Arizona Public Safety Personnel Retirement System (PSPRS). Fire Department Paid-On-Call Employees are covered under the Fire Department Alternate Pension and Benefit Plan. For details on these retirement plans, contact Human Resources.

All interested regular full time employees may participate in voluntary defined contribution plans as available.

### 5.4.2 - RETIREE BENEFITS

- A. Eligibility: An employee eligible for retirement Medical, Dental, Vision and Life Insurance benefits from the Town of Payson shall meet the requirements of the "Rule of 70" with a minimum of ten (10) years of service. To be eligible for coverage in retirement, an employee must obtain seventy (70) points by computing the sum of his/her age and the number of years of service to the Town. The service requirement consists of continued service unbroken by a resignation or termination for any period of time. An employee who is granted a leave of absence will not lose continued employment status.

A Council Member who has served eight (8) consecutive years will be eligible for retirement Medical, Dental, Vision and Life Insurance benefits upon reaching the age of sixty (60), except that no Council Member who is first elected or appointed to office in the year 1998 or thereafter shall be eligible, under any circumstances, for retirement Medical, Dental, Vision and Life Insurance benefits, and such benefits shall be limited to those Council Members first elected or appointed prior to the year 1998.

- B. Administration: Retirees under the age of sixty-five (65) will remain on the Town's Active Employee Medical Group Plan until such time as they reach their 65th birthday and become eligible for Medicare. Upon reaching the age of sixty-five (65), retirees are no longer eligible for the Town's insurance coverage.

Coverage for dependents follows the coverage of the retirees regardless of the age of dependents.

If a retiree who is eligible for benefits from the Arizona State Retirement Plan chooses to participate in the State's Plan, he/she will not later have the option of switching to the Town's Plan (which includes Dental, Vision and Life Insurance).

This sub-section B (Administration) shall not apply to employees hired prior to May 10, 1997.

- C. Benefits and Costs: Insurance benefits provided by the Town for retirees shall be subject to the availability of such coverage as authorized. The contributions of the Town and cost to a Retiree for the Town's insurance benefits will be subject to appropriations of the Town Council as provided in the annual budget.



## SECTION: 06 - SUPPLEMENTAL POLICIES

### 6.1 - TRAINING OF EMPLOYEES

#### 6.1.1 - EDUCATION ASSISTANCE PROGRAM

- A. Purpose. To assist the employees of the Town in continuing their education in order to help make them a more productive employee and to help attract and retain qualified employees.
  
- B. Policy. The following is established to manage the reimbursement of tuition costs to eligible employees through an employer provided Education Assistance program.
  - 1. Eligibility
    - a. Employees must be non-temporary, full-time who are not on Leave of Absence status without pay at both application approval and reimbursement, and have completed initial probation.
    - b. Work schedules will not be reduced for participating employees. The employee must take the course during non-scheduled work hours or during periods of approved leave.
    - c. All coursework must be completed during non-scheduled work hours.
    - d. This policy supports the reimbursement of classes that will improve skills in the current job or to gain skills and credentials required for a promotional process within the normal career path for the position. The policy is not intended to cover expenditures for education that are part of a program of study being pursued by the employee to qualify for an entirely new trade, business, or career.
  
  - 2. Covered Coursework
    - a. Must be offered from a public or private college, university, community college, or technical school accredited by an official accrediting body.
    - b. Each class must have a direct relationship to maintain or improve skills required by the employee in the employee’s present work or be a required course necessary to the completion of an approved undergraduate or graduate program.
    - c. No limit to the number of classes reimbursed.
    - d. Must have attached course credits. No “audited” classes will be reimbursed.
    - e. Most seminars, workshops, and professional conferences are not eligible for tuition reimbursement under this policy.
    - f. Seminars and courses taken for Continuing Education Units (CEU’s), to maintain job-required certifications are outside the scope of this policy and are the responsibility of an individual employee and/or the department to fund and monitor.
  
  - 3. Limits
    - a. This Education Assistance Program is subject to the annual budget approval process by the Town Council and the participating employee’s department budget.
    - b. No employee may be reimbursed more than the cost of 3 credit hours at Arizona State University. The dollar limit is based on the fiscal year in which the reimbursement funds are actually paid to the employee.
  
  - 4. Covered Costs
    - a. The Town of Payson will reimburse tuition to qualified employees based on actual course fees paid if the employee’s grade is an ‘A’ or ‘B’ up to the reimbursement limits.
    - b. Books, testing fees, application, registration, or enrollment fees are not eligible for reimbursement.
    - c. This policy has been designed as a non-taxable working condition fringe benefit and is excluded from the employee’s gross income for federal and state income tax purposes and payroll taxes.



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- d. If the course work is graduate level, the amount of the tuition reimbursement must be included as part of the employee's income.
- C. Authority and Responsibilities
1. Employees
    - a. Employees should develop their educational plans with their supervisors as part of their Performance Evaluation.
    - b. Tuition reimbursement requests should be submitted for approval to Human Resources no earlier than 90 days and no later than seven days after the start date of each class. Applications received after that may not be reimbursed subject to funding.
    - c. Complete the class and submit the required tuition reimbursement documents, such as itemized receipts and original grades to Human Resources for reimbursement within 60 days after the end date of the class.
    - d. Performance of coursework during non-work hours.
    - e. Employees who attempt to be reimbursed funds not authorized by this policy may be banned from any future participation in the program and may face further disciplinary action.
    - f. Employees who have participated in the Employee Education Assistance Program must work for the Town for two years after completion of their last Town education assistance reimbursement. If this two year requirement is not met, the employee must reimburse the Town for the prorated portion of the service time short of two years of education assistance reimbursement received.
  2. Supervisor or Managers
    - a. Develop educational plans for employees as necessary as part of their annual Performance Evaluation.
    - b. Approve only coursework that applies to the employee's current job, requirements for degree completion or career enhancement within the guidelines of this policy.
    - c. Managers may approve limited use of office supplies and equipment if use is pre-approved and school work is done during non-work hours.
  3. Human Resources
    - a. Provide an application form for the program.
    - b. Process requests and authorize reimbursement for costs of courses approved by supervisors that meet the requirements of this policy.
    - c. Forward completed tuition reimbursement forms to Human Resources for processing.

## 6.2 - DRIVING PRIVILEGES POLICY

### 6.2.1 - DRIVING PRIVILEGES

**Classification of Employment:** If driving a motor vehicle or possessing a Commercial Drivers License (CDL) is a requirement for employment, such requirement shall be noted in the job description.

**Review of Arizona Driver History:** At the time of employment and at least annually thereafter, the Personnel Officer shall obtain and review an Arizona Drivers History for each employee of the Town whose position requires a valid driver's license or CDL. Traffic citations for either an individual incident or in the aggregate, may be the basis for restricting that employee's use of Town-owned vehicles or driving a personal vehicle on Town business.

**Duty To Self Report:** Employees shall report to the Personnel Officer any charges of 1) drug or alcohol related traffic offenses; or 2) reckless or aggressive driving offenses; and any suspension, revocation, or restriction of the employee's driving privileges. Failure to so report shall result in disciplinary action.

**Loss of Driving Privileges:** Any employee for whom driving a motor vehicle is a requirement for employment, who has his/her Drivers License or CDL suspended, revoked, cancelled, denied, or required to have an ignition interlock device by the Arizona Department of Motor Vehicles, or who is required by law to surrender his or her drivers license or CDL,



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shall, as a result thereof, be subject to the following forms of disciplinary action:

- a. Suspension of employment without pay, after utilization of any accumulated paid leave during the entire period when the employee is unable to legally drive a motor vehicle or have a CDL, unless the employee can be temporarily assigned to a vacant position for which he or she is qualified and in which driving a motor vehicle or having a CDL is not a requirement; or
- b. Termination of employment if the period of suspension, revocation, cancellation, denial, surrender or interlock device requirement exceeds thirty (30) working days, including the utilization of any accumulated paid leave.

### **6.3 - MISCELLANEOUS**

#### **6.3.1 - OUTSIDE EMPLOYMENT**

An employee may engage in outside employment at the employee's discretion. Prior to accepting outside employment, the employee shall first discuss the matter with his or her immediate Supervisor and Department Head.

The employee may be asked to choose between his or her position with the Town and any outside employment if it is found that the outside employment interferes with the employee's duties with the Town.

Activities performed by licensed attorneys employed by the Town, including mandatory arbitration, pro-bono, and similar activities as required by the Arizona Rules of Court are exempt from this policy.

Employees of the Police Department performing law enforcement related activities shall be governed by operations, orders, and directives of the Police Department.

Outside employment activities shall not interfere with Town employment, and there shall be no conflict with the hours of the outside employment and the Town position. The following questions are set forth to assist in evaluating the type of activities that would be considered incompatible with Town employment. This list, however, is not intended to be all inclusive:

1. Does the outside employment involve receipt or acceptance by of any money or other consideration from anyone other than the Town for performance of an act which the employee should be required or expected to render in the course of Town employment?
2. Does the outside employment involve performance of an act or function which may be subject to the control, inspection, review, or enforcement by the employee or the department in which the employee is employed?
3. Does the outside employment affect an employee's attendance, performance or observance of safety precautions on his/her Town job?
4. Is the outside employment with any business or organization from which the Town purchases supplies or services; or with which the Town has a lease or rental property agreement or another contractual relationship?

#### **6.3.2 - GIFTS AND GRATUITIES**

No employee of the Town shall solicit or accept, for himself/herself or his/her immediate family favors, benefits, gifts, or gratuities under circumstances which might be construed by reasonable persons as influencing the performance of the employee's duties.



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### 6.3.3 - ADMINISTRATIVE REGULATIONS

The Town Manager is authorized to issue administrative policies to carry out the intent of this Manual. The Town Manager is also authorized to approve supplementary Departmental Administrative Rules and Regulations not in conflict with these rules.

### 6.3.4 - REPORTS OF CHANGE OF STATUS

All employees shall notify the Department Head and Human Resources of any change of address, telephone number, marital status, beneficiary, number of dependents or military status.

### 6.3.5 - PUBLIC INFORMATION

Employees shall be cognizant of the "public right to know". Town employees shall refer matters and any citizens' requests for service, complaint or inquiry to the proper department or jurisdiction and otherwise promote public confidence and sincere acceptance of public service.

In matters where the Town is a litigant or litigation is pending or anticipated, employees shall not discuss, give statements or depositions, or answer questions without first obtaining authorization to do so from the Town's legal representative.

## **6.4 - ANTI-HARASSMENT POLICY AND PROCEDURE**

### 6.4.1 - POLICY

The Town wishes to provide its employees with an environment that encourages efficient, productive and creative work, and which is free of discrimination, including all forms of harassment based upon race, color, religion, age, gender, national origin or disability. The Town of Payson will not tolerate discrimination or verbal or physical conduct by any employee which harasses, disrupts or interferes with another person's work performance or which creates an intimidating, offensive or hostile, environment.

After investigation and the opportunity to be heard, any employee who is found to have engaged in the harassment of another employee will be subject to appropriate disciplinary action up to and including termination.

Similarly, any employee who retaliates against someone for filing a complaint, or for assisting someone who has filed a complaint, alleging or reporting any instance of harassment, will be subject to appropriate discipline up to and including termination.

The failure of any individual to cooperate with an investigation of alleged harassment shall constitute a violation of this Manual.

### 6.4.2 - DEFINITION OF SEXUAL HARASSMENT

According to Title VII of the Civil Rights Act, sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals ("quid pro quo" harassment); or when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile, or offensive work environment ("hostile work environment"). 42 U.S.C. Sec. 2000e-2(a)(1); 29 CFR Sec. 1604.11(a)(3).

In addition, sexual harassment may include deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome and offensive to a reasonably sensitive employee, as well as innuendos, jokes, or sexually oriented comments.



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### 6.4.3 - GRIEVANCE PROCEDURE

1. Employees encouraged to come forward: Any employee who feels that he/she has been sexually harassed by an employee or public official of the Town is encouraged to immediately report the incident as hereinafter described. There will be no reprisals or retaliation against any employee for making such a report.
2. Reporting of incident or complaint by complaining employee: Any employee who feels that he/she has been sexually harassed should report the incident, preferably in writing, to one (1) of the following individuals, with whom the employee is the most comfortable discussing the matter:
  - a. The employee's immediate supervisor; or,
  - b. Any other supervisor; or,
  - c. The Personnel Officer; or,
  - d. The Town Manager.

While it is not required that the report be made in writing, the Town encourages the complaining employee to provide a complete written description of the incident(s) to facilitate a complete investigation of the matter.

3. Reporting of incident or complaint by supervisors: Every supervisor is responsible for promptly reporting any incident, complaint, or suspected act of sexual harassment to the Personnel Officer.

In the event that the Personnel Officer is the complaining employee, the alleged harasser, or so closely related to the alleged harassment so as to prevent him/her from acting in an unbiased and unprejudiced manner, such report of an alleged incident shall be promptly reported to the Town Manager.

Failure to report such harassment may result in disciplinary action.

Similarly, the Personnel Officer and Town Manager shall promptly exchange and share information concerning any complaint or suspected act of sexual harassment with each other in order to assure conformance with the grievance procedure described herein. In the event that either the Personnel Officer or Town Manager is the complaining employee, the alleged harasser, or so closely related to the alleged harassment so as to prevent either one from acting in an unbiased and unprejudiced manner, the remaining disinterested one of the two shall be responsible for assuring conformance with the grievance procedure described herein.

4. Confidentiality: Confidentiality will be preserved to the fullest extent possible, however, information and circumstances will be revealed to the extent necessary to effectively and thoroughly investigate all complaints or suspected acts of sexual harassment.
5. Investigation: The Personnel Officer shall, upon receiving notification of a complaint or suspected act of sexual harassment, take immediate action to conduct a prompt and thorough investigation, including but not necessarily limited to the following:
  - a. Discussing the allegations with the complaining employee;
  - b. Discussing the allegations with the alleged harasser; and
  - c. Interviewing witnesses.

The identity of the parties involved or specific details of the complaint or incident may be discussed with the Town Manager or Legal Department when seeking legal advice. The identity of the parties involved or specific details of the complaint or incident shall not be discussed with any other individual not directly involved in the investigation, other than as necessary to conduct the investigation.

In addition, the Personnel Officer, and all other individuals involved in, or contacted in connection with, the investigation shall make every effort to prevent gossip and to preserve the confidentiality of the investigation.



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In the event that the Personnel Officer is the complaining employee, the alleged harasser or otherwise so closely connected to the alleged harassment so as to prevent the Personnel Officer from acting in an unbiased and unprejudiced manner, the Town Manager shall appoint a disinterested supervisor to conduct such investigation.

6. Record of complaint, suspected act of harassment and investigation: The Personnel Officer shall thoroughly document the investigation, including, but not necessarily limited to, the complaint or suspected act of harassment; witness statements (oral and written); all individuals contacted about or having knowledge of the complaint or alleged incident; the date the alleged incident was reported or first became known to a supervisor, the Town Manager or the Personnel Officer; and all steps taken following the complaint, alleged incident, or first notice of the complaint or alleged incident. Such documentation shall be maintained by the Administrative Services Department in a separate file marked “CONFIDENTIAL”.
  
7. Due process of alleged harasser:
  - a. After interviewing the complaining employee, the Personnel Officer shall discuss the allegations with the alleged harasser.
  
  - b. Following investigation, the alleged harasser shall be provided clear notice of the outcome of the investigation; and shall be provided the opportunity to be heard by the Personnel Officer concerning the outcome of the investigation prior to any disciplinary action.

The alleged harasser may request that he/she be heard concerning the outcome of the investigation by the Town Manager as opposed to the Personnel Officer.

The Personnel Officer or the Town Manager, whichever conducts the meeting with the alleged harasser, shall fully document such meeting and place such documentation in a file to be maintained by the Human Resources in a separate file marked “CONFIDENTIAL”.
  
  - c. Following notice of the outcome of the investigation, if disciplinary action is determined to be appropriate, disciplinary action shall be taken in accordance with this Manual.
  
8. Monitor relations: The Personnel Officer shall periodically monitor the relations between the complaining employee and the alleged harasser to insure that no offensive conduct is repeated and that no retaliatory acts take place.

In the event that the Personnel Officer is the complaining employee, the alleged harasser, or so closely connected with the alleged incident so as to prevent the Personnel Officer from acting in an unbiased and unprejudiced manner, the Town Manager shall periodically monitor the relations between the complaining employee and the alleged harasser to insure that no offensive conduct is repeated and that no retaliatory acts take place.

### 6.6.4 - APPEAL

Any employee shall have the right to appeal to the Personnel Hearing Officer any disciplinary action resulting from an alleged violation of this sexual harassment policy.

### 6.4.5 - APPLICATION TO THIRD PARTIES

Sexual harassment by a Town employee acting in the course of employment is also contrary to Town policy, as well as state and federal law and thus subject to this sexual harassment policy.

## **6.5 - COMPUTER, E-MAIL, AND INTERNET POLICY**

Failure to follow the Town’s Computer, E-mail, and Internet Policy shall be grounds for discipline up to and including termination. See Appendix D.



## **6.6 - TAPING/EAVESDROPPING ON CONVERSATIONS**

It is the policy of the Town to encourage open communications among our employees, Department Heads, Council Members, and the public. To facilitate such open communications, and to prevent the negative results that may occur if employees are permitted to tape or secretly record or surreptitiously listen in on any conversation or communication, and to ensure compliance with applicable federal, state, and local wiretapping, eavesdropping, and privacy laws, the Town has instituted the following policy:

Without the prior written authorization of the Town Manager, no employee may openly or secretly tape or otherwise surreptitiously record or videotape, any conversation, communication, activity, or event. This prohibition applies to any conversation, communication, activity, or event which in any way involves the Town or employees of the Town, or any other individual with whom the Town is doing business or intending to do business in any capacity (for example, vendors, suppliers, consultants, attorneys, independent contractors). This policy also applies to conversations and communications with any other third parties unrelated to the Town including, but not limited to, outside legal counsel, auditors and regulatory officials.

"Taping" and "Recording" under this policy includes the taping or recording of any conversation or communication, regardless of whether the conversation or communication is taking place in person, over the telephone, or via any other communications device or equipment, and regardless of the method used to tape or record (e.g., as with a tape recorder, video recorder, mechanical recording, or wiretapping equipment), and regardless of where the conversation or communication takes place, i.e. whether on or off the Town's premises.

"Taping" and "Recording" under this policy does not include any lawful taping and recording engaged in by an employee on the employee's own time, with the employee's own equipment, away from the Town's place of business, and which does not involve in any manner whatsoever, directly or indirectly, the business or activities of the Town, or any of its employees. It does not include the taping/videoing of Town Council and Board/Committee meetings.

No employee may eavesdrop on the conversations or communications of other employees or non-employees in accordance with the same standards set forth above.

From time to time the Town may tape, record, videotape, or otherwise monitor conversations or other communications between employees and/or between employees and non-employees for legitimate business purposes, such as public service training, or to protect the integrity of certain business transactions (for example, sale orders taken over the telephone). Generally, employees will be notified when such taping or recording occurs, in accordance with applicable laws and sound employee relations principles. Under certain circumstances, however, notice may not be given, such as where the Town is conducting an investigation into allegedly unlawful or unethical activities, in conjunction with regulatory or other enforcement authorities.

Violations of this Section may result in disciplinary action against the offending employee(s), up to and including termination of employment. Where the conduct engaged in is illegal, violators may also be subject to prosecution under applicable federal, state, or local laws. If any employee has any questions or concerns regarding whether any contemplated taping or recording would violate this policy, he or she should discuss the matter with the Town Manager before engaging in any such activities.

This Section does not apply to Police Officers investigating criminal matters in accordance with Police Department Policies or the routine recording of meetings of the Town Council or Town Boards and Commissions.

## **6.7 - SAFETY PROGRAM**

### 6.7.1 - PURPOSE

The safety and health of each employee is extremely important. In order to achieve the highest degree of safety, the responsibility, organization and operational procedures for a safety program shall be put into effect.



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### 6.7.2 - WEARING OF SAFETY EQUIPMENT

In certain areas, the nature of the work requires the wearing and use of specialized protective clothing and equipment, such as hard hats, safety shoes, sturdy work shoes, rubber boots, gloves, protective eye goggles, ear plugs, respirators, etc. Some of the items will be provided by the Town; others will be the responsibility of the individual employee. In those areas where specialized protective clothing and equipment is required, its use and wear and procurement, if non-Town furnished, shall be considered a condition of employment. Failure to procure equipment may result in disciplinary action, up to and including termination.

### 6.7.3 - EMPLOYEE RESPONSIBILITIES

Employees should be aware of hazards that could lead to injury. They should think about their safety and well-being at all times, and also consider coworkers' safety and well-being. Safety is everyone's responsibility.

Supervisory personnel are responsible to record and correct all unsafe conditions and actions performed by employees. Additionally, employees are required to abide by Town and OSHA safety rules and procedures and are subject to discipline, up to and including termination, for violating safety rules. Employees also must read and understand the Town's safety policies and procedures. Employees are required to immediately report any unsafe condition or action to a supervisor or the safety officer.

Employees are responsible for following all safety rules and for using safety equipment furnished by the Town. Employee suggestions for safety, as well as suggestions for the improvement of any other phase of the Town's operations, are encouraged at all times.

### 6.7.4 - COMMUNICABLE DISEASES

The Town of Payson strives to be in compliance with all Equal Opportunity laws, including those involving persons with disabilities. Acquired Immunodeficiency Syndrome (AIDS) and other AIDS virus-related conditions are disabilities protected by federal law. Any employee or prospective employee with AIDS or human immunodeficiency virus (HIV) or any other communicable disease shall have every protection made available to disabled persons, including reasonable accommodation. This policy does not recommend routine HIV antibody screening for any Town employee group.

It is the intent of the Town to observe universal precautions for exposures, meaning that all human blood and certain body fluids such as blood, vomit, urine, and excrement, are considered potentially infectious. All departments must report any possible exposure to Human Resources, using the procedures outlined elsewhere for Workers Compensation reporting, to obtain instructions on medical procedures.

## **6.8 - SUBSTANCE ABUSE PROGRAM**

### 6.8.1 - DEFINITIONS

"Illegal drug" means any controlled substance listed in schedules I through V of the federal Controlled Substances Act (21 U.S.C. § 812), medication, or other chemical substance that (1) is not legally obtainable; or (2) is legally obtainable, but is not being used legally, or is not being used for the purpose(s) for which it was prescribed or intended by the manufacturer. Thus "illegal drug" may include even over-the-counter medications, if they are not being used for the purpose(s) for which the manufacturer intended them.

"Legal Drugs" means prescribed or over-the-counter drugs that are legally obtained by the employee and used for the purpose(s) for which the manufacturer intended or a doctor prescribed.

"Town property" and "Town equipment, machinery, and vehicles" means all property, equipment, machinery, and vehicles owned, leased, rented, or used by the Town.

"On duty" means all "hours worked", as defined by the Fair Labor Standards Act, as well as meal periods and break periods.



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### 6.8.2 - WORK RULES

- a. **Substance Abuse by Employees.**  
Employees who violate this Section will be subject to discipline, up to and including termination.
- b. **Alcohol.**  
Employees may not report to work, be on duty or operate Town of Payson equipment, machinery, or vehicles with detectable levels of alcohol in their system, with the exception of the proper use of medication that may contain alcohol. This subsection shall not apply to exempt employees.
- c. **Illegal Drugs.**  
Employees may not possess, engage in the use, or be under the influence of illegal drugs while on duty, while on Town property, or while operating Town equipment, machinery, or vehicles.

Employees may not work or report to work with detectable levels of an illegal drug or the metabolites of an illegal drug in their systems.

Employees may not use, manufacture, grow, distribute, dispense, transfer, or sell illegal drugs.

- d. **Legal Drugs/Medication.**  
Any employee who has reason to believe use of legal drugs, such as a prescribed medication, may pose a safety risk to any person or interfere with the employee's performance of his or her job must immediately report such to his or her supervisor and take appropriate steps to prevent the employee from placing themselves or the public in danger. The Town shall then determine whether any work restriction or limitation is necessary. Failure to report the use of legal drugs that may pose a safety risk could result in disciplinary action.
- e. **Criminal Drug Convictions**  
Any employee who is convicted of violating any criminal drug statute while in the workplace will be subject to discipline up to and including termination.

Employees are required to report any criminal drug conviction occurring in the workplace to his/her immediate supervisor within five calendar days.

### 6.8.3 - DRUG AND ALCOHOL TESTING

The Town requires employees and applicants to provide urine, breath, and/or other samples for drug and alcohol testing under any of the following circumstances:

- a. **Post-Offer, Pre-Employment Testing.**  
Pre-employment drug screens maybe part of the application process.
- b. **Reasonable Suspicion Testing.**  
Town may require any employee to undergo drug and alcohol testing if an employee's supervisor has a reasonable suspicion that the employee
  - (1) Has violated Town 's written work rules prohibiting the use, possession, sale, or transfer of illegal drugs or the use, sale, or transfer of alcohol while on duty, while on Town property, or while operating Town equipment, machinery, or vehicles; or
  - (2) Is under the influence of or impaired by alcohol and/or illegal drugs while on duty, while on Town of Payson property, or while operating Town of Payson equipment, machinery, or vehicles.
- c. **Testing for:**  
**Alcohol:** If a supervisor has reasonable suspicion that an employee is under the influence of or impaired by alcohol, the employee will not be permitted to work until he/she has taken an alcohol test and test results show a concentration of 0.02 or less.

**Drugs:** If a supervisor has reasonable suspicion that an employee is under the influence of or impaired by



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drugs, the employee will not be permitted to work until he/she has taken a drug test and the results show negative.

d. Post-Accident Testing.

The Town requires any employee to undergo drug and alcohol testing:

- (1) as soon as practicable after a work-related accident;
- (2) if medical attention was required after a work-related accident;
- (3) if material or equipment damage was sustained;
- (4) if the Town believes that the individual may have contributed to the cause of the accident; or
- (5) if the accident involves the death of a person(s).

The instant or quick test is sufficient for non-DOT drug screens; however, if the result is positive the person must report to a lab for testing.

e. Post-Injury Testing.

The Town may require any employee to undergo drug and alcohol testing who has sustained a work-related injury where there is reasonable suspicion that drugs and/or alcohol were involved.

f. Random Testing.

All on-duty employees who carry a firearm and who may be required to use deadly force in the regular course of their duties are subject to periodic unannounced random illegal drug and alcohol testing.

- (1) Employees to be tested shall be randomly selected.
- (2) Random tests will be unannounced and the dates for their administration will be spread reasonably throughout the year. Human Resources or the employee's supervisor will notify the employee if or when he/she is selected.
- (3) If an employee is notified of a random alcohol or drug test, he/she must proceed to the test site immediately or within two (2) hours

g. Treatment Program Testing.

Any employee who has been referred by the Town for chemical dependency treatment or evaluation or who is participating in a chemical dependency treatment program may be required to undergo drug and alcohol testing without prior notice during the evaluation or treatment period and for up to two (2) years following the employee's return to work.

### 6.8.4 - CONFIDENTIALITY OF TEST RESULTS

The Town will not disclose test results except as authorized by the test subject or as authorized, permitted, or required by applicable law.

### 6.8.5 - CONSEQUENCES OF REFUSAL

Employees and applicants may refuse to undergo drug and alcohol testing. However, employees who refuse to undergo testing or who fail to cooperate with the testing procedures will be subject to discipline, up to and including termination. Applicants who refuse to undergo testing or who fail to cooperate with the testing procedures will not be hired and will not be reconsidered for employment.

### 6.8.6 - RIGHT TO EXPLAIN TEST RESULTS

Any test subject who tests positive on a confirmatory test may::

- A. Submit additional information to Personnel Officer in a confidential setting to explain the result; and
- B. Request in writing a confirmatory retest of the original sample, at his or her own expense. The Personnel Officer must receive the request within five (5) working days after the test subject has been informed of the confirmed test result. Confirmatory retests requested and paid for by the test subject may be conducted only by laboratories that are properly approved to conduct drug and alcohol testing by the National Institute on Drug Abuse, the Department of Health and Human Services, or the College of American Pathologists.



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### 6.8.7 - CONSEQUENCES OF CONFIRMED POSITIVE TEST RESULTS

- a. Any applicant who tests positive on a confirmatory test and who does not successfully refute the test results within five (5) days by explanation or retesting will not be hired and will not be reconsidered for employment.
- b. Any employee who tests positive on a confirmatory test and who does not successfully refute the test results within five (5) days by explanation or retesting will be subject to discipline, up to and including termination.
- c. Any employee who refuses to take, or who tests positive on a confirmatory test and who does not successfully refute the test results within five (5) days by explanation or re-testing and who is terminated will be subject to loss of unemployment insurance benefits.

Any employee who tests positive on a confirmatory test after a workplace accident or injury and who does not timely and successfully refute the test results within five (5) days by explanation or re-testing may be subject to loss of workers' compensation benefits.

## **6.9 - RIGHTS TO PRIVACY AND CONFIDENTIALITY**

All medical information gained by or in the possession of the Town about the health status of an employee, including the identity of an employee affected by a communicable disease, shall be confidential.

## **6.10 - WORK PLACE VIOLENCE**

### 6.10.1 - POLICY

The occurrence of violence or threatening or intimidating behavior in the workplace is unacceptable. While the Town has no intention of intruding into the private life of its employees, it expects all employees to report to the workplace and to perform their job without violence or threats or intimidation towards any other individual. The Town expects all of its employees to work in a manner so that they can perform their duties safely.

Upon reasonable suspicion, the Town has the right to search any areas on Town premises for deadly weapons including, but not limited to, lockers, furniture, containers, drawers, equipment or other facilities, lunch boxes, brief cases, personal bags, personal tool boxes or tool kits, parking lots, and Town vehicles.

Employees must report threatening or intimidating behavior or acts of violence to a supervisor immediately.

### 6.10.2 - PROHIBITED ACTIVITIES OF EMPLOYEES

The following are prohibited:

1. Threatening or intimidating another person.
2. Possession of a deadly weapon during the course of employment unless:
  - a. The employee's job description requires the possession of a deadly weapon; or
  - b. The employee receives written permission from the Town Manager for the possession of a deadly weapon. If granted, the Town Manager may place restrictions on such possession.
3. Unlawful possession, use, or sale of a deadly weapon that adversely affects the employee's or another's safety, or indicates a propensity to adversely affect the employee or coworkers.
4. Refusing to submit to an inspection of the employees' work area for the presence of a deadly weapon, pursuant to this section.
5. Conviction of a felony criminal statute for the illegal possession of a deadly weapon or for



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committing a violent act against another.

6. Refusing to participate in an investigation pertaining to allegations of a violation of this section by another person.

### 6.10.3 - DEFINITIONS

Threatening or Intimidating shall have the same meaning as used in A.R.S. §13-1202.

Deadly Weapon shall have the same meaning as used in A.R.S §13-3101.

## **6.11 - COMMERCIAL DRIVER'S LICENSE (CDL) ALCOHOL AND DRUG TESTING PROGRAM POLICY**

### 6.11.1 - PURPOSE

This section establishes the policy of the Town for compliance with the Omnibus Transportation Employee Testing Act of 1991. The Act requires alcohol and drug testing of employees who are required to have a commercial drivers license (CDL). Employees whose job description does not call for a CDL will not be allowed to operate trucks or equipment which requires a CDL driver or operator. (A CDL is required for drivers operating a vehicle in excess of 26,000 pounds GVWR, designed to carry 16 or more passengers, including the driver, or of any size which is used in the transportation of a placardable amount of hazardous material.) Employees who have a CDL but whose job does not require them to possess one will not be tested.

### 6.11.2 - POLICY COMMUNICATION

Employees are encouraged to ask questions if there is any part of this section that is not understood. The Town has responsibility to help employees understand this section. The employee is responsible for understanding and complying with this section. Failure to read or understand any part of the section will not relieve the employee of the responsibility to abide by it.

### 6.11.3 - POLICY

#### Who will be subject to being tested?

All employees whose job description requires them to possess a CDL will be tested.

#### What substances will be tested for?

1. Controlled substances: Cocaine, marijuana, opiates, amphetamines, and phencyclidine (PCP).
2. Blood alcohol.

#### What are the prohibitions?

1. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having a blood alcohol concentration (BAC) of 0.02 or greater.
2. No driver shall be on duty while possessing or consuming alcohol.
3. No driver shall be on duty while possessing or using any trace of controlled substances.
4. No driver shall report to duty within four (4) hours after consuming alcohol.
5. No driver required to take a post-accident alcohol test shall consume alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

Note: Medicine containing alcohol or controlled substances may be used while operating a vehicle pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability for safe operation. Further, the employee shall receive, in writing, the aforementioned physician's advice and present



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a copy to his/her supervisor prior to commencing the operations for each shift before which such substances are used by such employee.

### When will alcohol and drug testing be conducted?

1. Post Offer- Pre employment - After the candidate has been offered the job but before he/she actually begins work.
2. Post layoff period - Employees returning to work after a layoff period of more than 30 days.
3. Change in job duties – Employees’ job duties change in such a way that he/she is required to obtain a CDL license.
4. Reasonable suspicion - A supervisor has reasonable grounds to suspect that an employee is under the influence of controlled substances or alcohol or both, either when reporting to work or during a shift.
5. Post accident - After every accident involving a fatality, no matter who was at fault. After any accident where the employee received a moving traffic citation, testing shall be done as soon as possible following the accident.

For the purpose of this rule an accident is defined as an accident involving a commercial motor vehicle in which there is property damage, either a fatality, an injury treated away from the scene, or a vehicle required to be towed from the scene, or as a result of which the employee receives a traffic citation.

6. Return to duty - Testing is conducted when an employee who has violated the prohibited alcohol or drug conduct standards returns to a CDL position performing safety-sensitive duties. (For a BAC testing of above 0.02 for any testing, that driver must undergo a return-to-work test to verify he/she is below 0.02.)
7. Follow up testing - Unannounced testing conducted after a driver returns to duty after any hiatus from active duty. At least six (6) tests will be conducted within the first twelve (12) months. Follow-up testing shall not exceed 60 months from the date of the driver's return to work.
8. Random testing - Sporadically scheduled drug and alcohol tests will be performed throughout the calendar year. The percentages of CDL holders tested is based on the number of CDL holders as of January 31 of any calendar year.
  - A. No less than 50% of CDL holders shall be selected for random drug tests and no less than 25% shall be selected for random alcohol tests.
  - B. Being selected and subjected to a random test (or for any testing reason) does not remove the employee from future drawings. Therefore, it is possible for any one employee to be drawn for any or all tests throughout the year.

Note: Time spent traveling to and taking tests (except for Post Offer- Pre Employment Tests) will be recorded as "time worked." All testing costs will be paid by the Town.

### What are the consequences of testing refusal?

New Hires - Candidates refusing post Conditional Job offer testing, or failing to appear for testing will have the job offer withdrawn. An exception will be if the candidate is delayed or mistaken about the appointment and is able to make up the appointment within a 24-hour period of the originally scheduled appointment.

Applicants who held previous CDL driving positions are required to sign a release form that allows the Town to



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obtain alcohol and drug test results and information from all previous employers for the past two (2) years. If said release is not given by the candidate, the job offer will be withdrawn.

### Employees:

- A. For refusal of reasonable suspicion testing, post accident testing, random testing, return to duty testing, or follow up testing, employees will be terminated.
- B. For change in duties as a result of a promotion, the promotional offer will be withdrawn.
- C. For demotion, reclassification, or change in job description refusal will result in an administrative action, up to and including termination.

### Behavior that constitutes refusal:

- A. Failure to provide adequate breath for testing without a valid medical explanation.
- B. Failure to provide adequate urine for controlled substances testing without a valid medical explanation.
- C. Engaging in conduct that clearly obstructs the testing process.
- D. Failure to show up for scheduled testing unless documentation of a medical reason is presented.
- E. Failure to proceed to the testing site within 30 minutes of being notified to report for any post accident, reasonable suspicion, or random testing.

### Consequences of a positive test:

In the event an accident requires a post-accident test or the finding of reasonable suspicion leads to a DOT reasonable suspicion test, the employee shall be immediately removed from performing a covered task pending the results. Under no circumstances is such action to be triggered on the basis of the report of confirmed laboratory test results that have not yet been verified by the Personnel Officer.

First Offense - Test results of a 0.02 or greater verified by the Personnel Officer will result in termination.

Any drug test verified positive by the Personnel Officer will result in termination.

### Responsibilities of involved parties

#### Human Resources

Human Resources will be responsible for administering and scheduling all drug and alcohol testing.

Human Resources will be responsible for coordinating training associated with this section.

The “Designated Employer Representative” (DER) is the Personnel Officer. The DER is authorized to take immediate action(s) to remove employees from covered tasks, or cause an employee to be removed from these tasks, and to make decisions in the testing and evaluation process. The DER also receives results and other communication for the Town consistent with the requirements of 49 CFR Part 40.

#### Employee

CDL drivers shall not report to work or remain on duty when under the influence of alcohol or with a controlled substance in their system, unless a doctor has stated that the substance is medicinal and will not impair the driver.

Suspicious behavior of a co-worker should be brought to the immediate attention of a supervisor. Failure to do so may result in disciplinary action.

Employees must cooperate with test requests and release of information or risk disciplinary action, up to and including termination.



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Employees must immediately contact the police or other appropriate law enforcement agency regarding all motor vehicle accidents. Employees must immediately contact their supervisor for any equipment accidents or employee injury.

Employees shall contact a supervisor following a motor vehicle accident where death has occurred or they have been cited for the accident, so testing can be arranged. Drivers leaving the scene before contacting a supervisor may be deemed to have refused to submit to testing and are subject to disciplinary action up to and including termination. This does not mean that necessary treatment for injured people should be delayed or that a driver cannot leave the scene for the period necessary to obtain assistance.

Employees may drive themselves to the testing site for tests set up by Human Resources. For tests following accidents or reasonable suspicion, the employee will be driven by the Supervisor, or his/her designee.

For any positive alcohol or drug test, the employee will not be allowed to drive himself/herself home.

### Supervisors

Supervisors are required to have a minimum one-hour training in recognizing drug and alcohol use at least every 12 months.

Supervisors having knowledge that an employee possesses alcohol or has an alcohol concentration of 0.02 percent or greater shall not permit the employee to drive a vehicle on Town business.

Supervisors having knowledge that an employee is using alcohol or has used alcohol within a four (4) hour period prior to work shall not permit the employee to perform safety-sensitive functions.

Supervisors having knowledge that an employee is in possession of drugs, has used or taken drugs into his/her body, or has tested positive for drug use shall not permit the employee to drive a vehicle or perform safety sensitive functions, unless it is determined that the drugs are legal and will not cause impairment.

Supervisors are responsible for arranging transportation for any employee travel to and from post accident and reasonable suspicion tests.

If a BAC test is not administered within two (2) hours following the accident, the supervisor will report the reasons, in writing, and forward the report to Human Resources. If the BAC test is not administered within eight (8) hours following the accident, all attempts to administer the test shall cease. The supervisor will report the reasons in writing and forward the report to Human Resources.

If a drug test is not administered within 32 hours following the accident or reasonable suspicion, all attempts to administer the test shall cease. The supervisor will record the reasons and forward the report to Human Resources.

For reasonable grounds suspicion, a supervisor should, if practical, seek the opinion of at least one additional trained supervisor.

Reasonable grounds for suspicion would include a combination of factors such as slurred speech, red eyes, dilated pupils, incoherence, unsteadiness, smell of alcohol or marijuana emanating from the employee's body, inability to carry on a rational conversation, increased carelessness, erratic behavior, inability to perform the job, or other unexplained behavioral changes, or other indications of drug and/or alcohol use.

If reasonable grounds exist, the supervisor(s) shall document these observations immediately in writing and forward them to the Personnel Officer within 24 hours. A copy of this document will be provided to the employee upon request.

The Supervisor shall inform the employee of the following:



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- (a) The testing is part of his/her job responsibilities, and that refusal to take the test, cooperate, or sign the release of information, may result in disciplinary action up to and including termination.
- (b) The employee will be sent home without pay for 24 hours from the time of the positive alcohol test. Further disciplinary action will be as per policy.
- (c) The employee will be suspended with pay pending drug screening results.
- (d) The Town will pay for the test and the time spent traveling and taking the test is time worked.

### For return to duty testing:

Supervisors shall schedule an alcohol test no sooner than 18 hours after the initial test, subject to testing site availability and office hours. All copies of test results shall be sent to the Personnel Officer.

Supervisor will provide new CDL employees a copy of this policy upon employment. Supervisors shall notify the Personnel Officer of any new CDL employees so that an orientation training for this policy can be scheduled.

### Testing/collection sites

Human Resources will identify collection sites and provide information in this regard to Town employees.

### Confidentiality of testing results

Release of controlled substances and alcohol tests will be allowed only under the following circumstances:

1. Testing results shall be placed in the workplace compliance file and will be kept confidential as per law.
2. Upon written request a driver is entitled to obtain copies of any records pertaining to his/her use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests.
3. The Town shall permit access to all facilities utilized in complying with the requirements of this law to the Secretary of Transportation, Department of Transportation (DOT), or any state or local official with regulatory authority over the Town or any of its drivers.
4. The Town shall make available copies of all results of the Town's alcohol and/or controlled substances testing conducted, and any other information pertaining to the Town's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, DOT, or any state or local officials with regulatory authority over the employer or any of its drivers.
5. When requested by the National Transportation Safety Board as part of an accident investigation, the Town shall disclose information related to the Town's administration of a post-accident alcohol and/or controlled substances test administered following the accident under investigation.
6. Records shall be made available to subsequent employers upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.
7. The Town may disclose information required to be maintained under this law pertaining to a driver, the decision maker, and counsel for the Town in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from the results of an alcohol and/or controlled substance test administered under this section, or from the Town's determination that the driver engaged in prohibited conduct (including, but not limited to a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver or any administrative action).



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### Testing methods and collection procedures

Methods and procedures shall be established and may be modified from time to time by Human Resources in accordance with law and requirements of contracts which the Town may enter into for such testing.



## **SECTION: 07 – ADMINISTRATIVE CONTROLS**

### **7.1 - AMENDMENTS**

The Town Council may amend this Policy Manual from time to time as it deems necessary. Such amendments shall be by Resolution. Proposed amendments shall be reviewed by the Town Manager and the Town Attorney prior to submission to the Town Council.

### **7.2 - DEPARTMENTAL RULES**

Departments may adopt supplement rules consistent with this Manual subject to review and approval of the Town Manager.

### **7.3 - SEVERABILITY**

Should any article, paragraph, sentence, clause or phrase of this Manual or the application of the same to a particular set of persons or circumstances be declared unconstitutional or invalid for any reason, the remainder of such Manual shall not be affected and the Manual shall be interpreted to conform to the requirements of any law or regulation to the maximum extent.

### **7.4 - REPEAL**

This Manual shall displace and repeal all prior Personnel Manuals and the amendments thereto, together with all pre-existing ordinances and resolutions in conflict with the terms and policies set forth herein.

### **7.5 - EFFECTIVE DATE**

This Manual shall apply to all existing employees and any others hired after its adoption. The Manual shall govern the rights and obligations of the Town and its employees and officers upon approval by the Common Council of the Town.

## APPENDIX “A”

### Town of Payson Ethical Standards for Town Employees

#### **PURPOSE**

The expectation for all members of the Town’s workforce is that they will promote the highest standards of honesty and integrity in Town government and ensure the quality of Town government through adherence to ethical principles. The purpose of these Ethical Standards is to identify the standards of professional, ethical, legal, and socially responsible behavior expected of Town employees and contract workers (*see Section 3, below*). All Town business should be conducted in a manner that is not only above reproach in fact, but also in appearance.

To identify ethics issues within a legal framework is only the beginning of the process that must be considered in municipal government work. Legal guidelines provide only the initial foundation for ethical issues. As stewards of the public trust, Town employees and contract workers are expected to uphold the highest standard of conduct at all times. An individual employee’s actions will be viewed and regarded by the community, customers, and fellow staff persons, as a reflection of the Town of Payson and its values.

These Ethical Standards for Town Employees are in addition to any other applicable codes of conduct currently or hereafter in effect.

#### **DEFINITIONS**

Town employee: Any individual employed by the Town, including full-time, regular employees, part-time, regular employees; part-time, temporary employees; temporary employees; seasonal employees.

Town property: Any Town owned, leased, or controlled property, such as office buildings, parks, preserve areas, and other areas in which the employee may conduct work for the Town.

Town equipment: Any Town owned, leased, or controlled equipment such as vehicles, heavy equipment trucks, mechanical and power devices, hand tools, computers, electronic communication, business machines, etc.

Conflict of interest: A condition that exists when an employee or contract worker participates in or makes a decision that may affect the financial or property interests of the employee, or a close relative of the employee, or as otherwise provided by Arizona law.

Contract worker: An individual who is employed by an outside agency rather than the Town, or who provides services to the Town pursuant to a contract between the individual or agency and the Town for remuneration.

## **POLICY**

### Ethical Conduct--Expectations

All Town employees and contract workers must:

1. Uphold and comply with all state and federal laws, and Town ordinances, rules, and policies.
2. Maintain the highest standards of personal integrity, truthfulness, and fairness. See *Attachment A*, Section 1.2.3.
3. Place the interests of the Town, the community, and its citizens before personal or private interests in situations in which they may be in conflict, unless such personal or private interests are clearly more urgent at the time.
4. Promote impartiality, fairness, and equality under the law toward all with whom they may have contact.
5. Support and implement the policy decisions, directions, rules, and regulations established by Town Council and Town management.
6. Comply with the conflict of interest provisions of state law (Arizona Revised Statutes Sections 38-501 through 38-511) and federal law.
7. Comply with all Town Code provisions relating to outside employment, to political activity, and to gifts and gratuities; and these Ethical Standards.
8. Perform the duties and responsibilities of their position in such a manner as to avoid even the appearance of misconduct or impropriety. (For example, would you be proud of your actions if you read about them in the newspaper?)
9. Use Town funds, assets, property, and equipment solely for Town purposes, except for such limited personal uses as are expressly permitted, pursuant to the Town Code or these Ethical Standards.

10. Maintain the confidentiality of information acquired in the performance of governmental duties and not disclose it for any unauthorized purpose, including but not limited to personal, professional, or political benefit or gain. (For example: If you have access to personal information about your coworkers in a Town database, that information should not be shared or otherwise used for unauthorized purposes.)
11. Promote and maintain a work environment free from favoritism or discrimination based on race, color, gender, national origin, religion, age, or physical or mental disability. *See Attachment A, Section 1.2.3, Section 4.2.1.*
12. Promote and maintain a work environment free from sexual harassment or improper sexual conduct or communication (verbal or written). *See Attachment A, Section 6.4.*
13. Promote and maintain a work environment free from foul or abusive language, and from slander and malicious gossip. *See Attachment A, Section 4.2.1.*
14. Promote and maintain a work environment free from undue influence or pressure upon subordinates relating to issues outside the scope of their employment.

### Unacceptable Conduct

No Town employee or contract worker shall:

1. Solicit gifts, gratuities, fees, services, discounts, purchases, entertainment, or other benefits or items of value for the performance of their Town duties, or otherwise for personal benefit. *See Attachment A, Section 4.2.1, Section 6.3.1.*
2. Accept monetary gratuities, tips, honoraria, or other payments for services rendered for performing Town employment or official Town duties, other than compensation from the Town or that which is otherwise provided for by law or Town policy. (For example: Financial awards from a professional organization for being a speaker are not acceptable.) *See Attachment A, Section 6.3.1.*
3. Accept any gifts, gratuities, fees, services, discounts, purchases, entertainment, or other personal benefit or items of value (other than what could be made available through the Town's employee benefits programs), if the acceptance could reasonably be

construed as an attempt to exert improper influence on any municipal decision or action, or as a reward for any official action, including those related to hiring, appointment, or promotion. *See Attachment A, Section 4.2.1, Section 6.3.1.*

4. Solicit Town employees for non-work related products and services on behalf of outside vendors during regular work hours. Solicitation for charitable, non-profit fund-raising events is permissible only with the prior approval by the department manager, or equivalent position, and shall not disrupt or negatively impact normal business activities. *See Attachment A, Section 6.3.1.*
5. Engage in political activities during working hours, except that employees may exercise their rights as a citizen to vote and to express opinions as an individual citizen, but may not use their Town position for political purposes. (This rule does not apply to employees who are also elected officials.) *See Attachment A, Section 1.2.7, Section 4.2.1.*
6. Engage in conduct, either during or outside of regular duty hours, which is in violation of the following: *Attachment A, Section 4.2.1.*
7. Use Town resources not available to the public in general, such as Town staff time, funds, equipment, supplies, or facilities, for private or personal gain; use of such resources for personal purposes shall not be permitted unless authorized in writing by a department head or the Town Manager. (For example: use of Town equipment, vehicles, materials, or time to start or operate your own business.) *See Attachment A, Section 4.2.1.*
8. Participate in the consideration, award, or administration of any contract, or in a Town business decision, when to do so constitutes a conflict of interest. (For example: allowing personal relationships to influence Town business decisions or actions.)
9. Knowingly allow themselves, their uniforms, equipment, or other indicators of Town employment to be used to promote any commercial activity. This prohibition does not apply to the filming, photographing, or otherwise capturing the likeness of Town employees or contract workers, while engaged in their normal working activities by the news media, or during activities presented or sponsored by the Town that are open to the public. *See Attachment A, Section 6.3.1.*
10. Engage in Town business-related issues that involve a member of the employee's or contract worker's family, or with which the Town employee or contract worker has a business or personal relationship, unless permitted by law or Town policy, even if the profit or gain is non-monetary in nature.
11. Engage in outside employment, including self-employment or family businesses when to do so conflicts with Town duties and/or responsibilities. *See Attachment A, Section 6.3.1.*

12. Engage in conduct that constitutes or contributes to favoritism or discrimination based on race, color, gender, national origin, religion, age, or physical or mental disability. (For example: serving on a selection panel and influencing disparate treatment of candidates; or favoring the hiring or promotion of persons based on their religion.) *See Attachment A, Rule 29; Section 6.4.*
13. Engage in conduct, while on duty, that constitutes or contributes to any form of sexual harassment or improper sexual conduct (verbal or written). (For example: telling sexually oriented jokes; inappropriate touching; or making sexual advances.) *See Attachment A, Section 6.4.*
14. Engage in foul, abusive, or profane language, while on duty, that demeans, embarrasses, offends, or threatens others. (For example: directing profane remarks at someone; profaning religious beliefs.) *See Attachment A, Section 4.2.1.*
15. Engage in slander or malicious gossip, while on duty, that demeans, embarrasses, offends, or threatens others. *See Attachment A, Section 4.2.1.*
16. Engage in conduct, either while on duty or off-duty, that may put undue influence or pressure upon subordinates, either in relation to official duties or personal involvement. (For example: asking to spend time alone ["dating"]; sharing personal information of an intimate nature; seeking opportunities to make personal sales of any type.) *See Attachment A, Section 6.4.*

## **RESPONSIBILITIES**

All Town employees and contract workers are responsible for complying with these Ethical Standards. In addition, all employees and contract workers who have experienced, observed, or have knowledge of a violation of these Ethical Standards are encouraged to report the violation to the Human Resources Director, or the Town Manager. Complaints regarding any member of the Human Resources department will be filed with the Town Manager. Investigative reports for all complaints will be reviewed by both the Human Resources Director and the Town Manager.

Town of Payson department heads and supervisors are expected to exhibit behavior that upholds excellence in personal and professional conduct. Additionally, all department heads and supervisors, with the advice and assistance of the office of the Human Resources Director, are responsible for enforcing these Ethical Standards.

Staff members who believe they may have a conflict of interest in regard to a Town business matter, after review with the Town Manager, should consult with the Town Attorney's office, which will evaluate the facts and provide guidance on the issue.

## **EDUCATION AND TRAINING**

To provide consistent and up-to-date guidance for Town employees and to protect the public trust, the Town shall provide:

1. Public Service Ethics Training to all Town employees to be conducted no less than annually. New employee orientation shall include a review of the "Ethical Standards Policy". Training sessions will be comprehensive and meaningful, such that they will:
  - Explain the letter and spirit of public service ethics laws regulating service to the Town;
  - Use case studies or examples illustrating the application of the public service ethics laws to general behavior and specific situations; and
  - Examine and illustrate the approved process to follow should employees have questions or concerns regarding their activities or those of others in Town service.

Upon completion of each public service training program, attendees shall sign (1) a statement confirming they have completed the training and acknowledging they are aware of the public service ethics laws and will abide by them, and (2) the Personal Interest Disclosure Form for Employees (*Attachment C* hereto).

2. Educational materials are to be updated periodically to reflect any changes in applicable laws and to incorporate fresh illustrative examples. The Town Attorney shall update annually, or more frequently if necessary, both *Attachment B* (the annotated matrix of public service ethics laws) and *Attachment C* (Personal Interest Disclosure Form) to the Code of Ethical Behavior to ensure the documents present accurate information. The Town Manager shall ensure that each Town employee receives and agrees to follow the Town's Administrative Regulation on ethical standards at new employee orientations.

## **PROGRAM/PROCESS CONTROLS**

Employees in violation of these Ethical Standards will be subject to disciplinary action up to and including termination.

## **PROCEDURES**

### **Disclosure Procedure**

Any employee who is or may be called upon to participate in a decision-making process, in which the employee's participation would constitute a conflict of interest, or the appearance of a conflict of interest or impropriety, must immediately notify his or her supervisor. If a conflict of interest exists, the law requires that the affected employee remove himself or herself from the decision-making process and not participate in the decision, or attempt to influence it in any way. The Town Attorney's office should be called upon, as necessary, to assist in determining whether the specific facts constitute a conflict of interest.

### **Complaint Procedure**

An employee or contract worker who has experienced, observed, or has knowledge of a violation of these Ethical Standards must report it to the Human Resources Director. If any violation is by the Human Resources Director it must be reported to the Town Manager. Information relating to the violation must be formally reported in writing on an Ethics Complaint Form that is available from the Human Resources department. Following an investigation, substantiated complaints will result in corrective action or discipline in accordance with Town Personnel Policies and Procedures. An employee receiving discipline for a violation of these Ethical Standards will be afforded such rights of appeal as are provided by Town Code. Information acquired in the course of an ethics investigation will be accorded the highest degree of confidentiality permitted by the circumstances and by law, but may be subject to disclosure under the Public Records Act.

If the complaint is against the Town Manager or the Town Attorney, the complaint procedure shall follow the procedure set forth in Section 2 of the Town of Payson Code of Ethical Behavior for Town Officials.

Confidentiality of complaints and the disposition thereof is subject to adjudication by the Town.

Retaliation against any person who reports and/or participates in the investigation of a violation of these Ethical Standards is prohibited. Retaliation includes, but is not limited to, unlawful discrimination, refusing to recommend an employee for an opportunity for which he or she qualifies, spreading rumors about the employee, encouraging hostility from co-workers, any other negative, tangible employment action done intentionally, or any action done in the course of employment designed to or resulting in a detriment to the reporting or the participating party. An employee engaging in retaliation will be subject to disciplinary action, up to and including dismissal.

### **False or Misleading Complaints**

If, after reviewing the ethics complaint and investigation, it is determined that the complaint has been filed in bad faith, or for the purpose of harassment, or that false or malicious information has intentionally been provided, the complaining party will be subject to disciplinary action.

**ATTACHMENT A**

<b>TOPIC</b>	<b>TOWN OF PAYSON PERSONNEL RULES &amp; PROCEDURES</b>
<p>Section 1.2.3 Fair Employment</p>	<p>The Town of Payson is an equal employment opportunity employer and does not discriminate against applicants or employees who meet all qualifications and requirements of Town service on the basis of race, color, gender, national origin, age, disability or any other status protected by law. The Town is committed to its obligations under State and Federal laws against discrimination and will not tolerate retaliation against individuals who oppose unlawful discrimination or participate in investigations concerning claims of discrimination. The Town also prohibits and will not tolerate harassment of applicants or employees on the basis of race, color, religion, gender, national origin, age or disability.</p> <p>Employees and other individuals may address concerns or complaints about alleged, perceived, or actual discrimination to the Personnel Officer or the Town Manager without fear of retaliation. Complaints of unlawful discrimination shall be reported and thoroughly investigated. All employees must comply with the Town's fair employment policies. Any employee, including managers and supervisors, who violates the Town's policies or laws against discrimination shall be subject to discipline, up to and including termination.</p>
<p>Section 1.2.7 Improper Political Activity</p>	<p>No person elected or employed by the Town shall orally, in writing, electronically,, or otherwise solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose whatsoever from any Town employee.</p> <p>Any authorized solicitations shall not be conducted during working hours.</p> <p>No employee shall make, solicit or receive any contribution to the campaign funds of any candidate for municipal office of the Town of Payson, or take any part in the management, affairs or political campaign of any such candidate, but he/she may exercise any other rights of a qualified elector.</p>
<p>Section 4.2.1 Reasons For Dismissal</p>	<p>#1 The employee is incompetent or inefficient in the performance of his/her duties.</p> <p>#2 The employee has been abusive in his/her attitude, language, conduct or has caused physical harm or injury to employees or the public.</p>

- #3 The employee violates any reasonable direction and/or written departmental regulation given by the supervisor.
- #4 The employee has violated the substance abuse policy.
- #5 The employee takes anything of value in exchange for providing a favor or better treatment to another person.
- #6 The employee is convicted of a felony.
- #7 The employee has made false statements, written or oral, attempting to conceal any past or present criminal activity.
- #8 The employee fails to notify Human Resources of being arrested or charged with a criminal offense.
- #9 The employee fails to cooperate with any internal investigation by the Town and the failure does not result from the employee's invocation of his/her rights.
- #10 The employee willfully or recklessly causes damage to public property or waste of public resources.
- #11 The employee has been absent without leave, or has failed to report after a leave of absence has expired, or after such leave of absence has been disapproved, revoked, or cancelled by the Town Manager.
- #12 A non-exempt employee engages in outside business activities on Town time.
- #13 An employee uses Town property not otherwise available to the public for personal use.
- #14 The employee has engaged in improper political activities, as prohibited by this Manual.
- #15 The employee deliberately gave incorrect information on his/her employment application.
- #16 The employee has been chronically tardy and/or failed to maintain prescribed working hours.
- #17 The employee has committed any action, on or off the job, which reasonably tends to bring discredit to the Town service.
- #18 The employee has failed to meet the terms of a disciplinary probation period.
- #19 The employee has violated any provision of this Manual.
- #20 The employee has committed any other conduct of equal gravity to the reasons enumerated in this section.

<p>Section 6.3.1 Outside Employment</p>	<p>An employee may engage in outside employment at the employee's discretion. Prior to accepting outside employment, the employee shall first discuss the matter with his/her immediate Supervisor and Department Head.</p> <p>The employee may be asked to choose between his/her position with the Town and any outside employment if it is found that the outside employment interferes with the employee's duties with the Town.</p> <p>Activities performed by licensed attorneys employed by the Town, including mandatory arbitration, pro-bono, and similar activities as required by the Arizona Rules of Court are exempt from this policy.</p> <p>Employees of the Police Department performing law enforcement related activities shall be governed by operations, orders, and directives of the Police Department.</p> <p>Outside employment activities shall not interfere with Town employment, and there shall be no conflict with the hours of the outside employment and the Town position. The following questions are set forth to assist in evaluating the type of activities that would be considered incompatible with Town employment. The list, however, is not intended to be all inclusive:</p> <ol style="list-style-type: none"> <li>1. Does the outside employment involve receipt or acceptance of any money or other consideration from anyone other than the Town for performance of an act which the employee should be required or expected to render in the course of Town employment?</li> <li>2. Does the outside employment involve performance of an act or function which may be subject to the control, inspection, review, or enforcement by the employee or the department in which the employee is employed?</li> <li>3. Does the outside employment affect an employee's attendance, performance or observations of safety precautions on his/her Town job?</li> <li>4. Is the outside employment with any business or organization from which the Town purchases supplies or services; or with which the Town has a lease or rental property agreement or another contractual relationship?</li> </ol>
<p>Section 4.2.1 Gifts &amp; Gratuities</p>	<p>#5 The employee takes anything of value in exchange for providing a favor or better treatment to another person.</p>

Section 6.4  
Sexual Harassment  
Policy Statement

The Town of Payson wishes to provide its employees with an environment that encourages efficient, productive, and creative work, and which is free of discrimination, including all forms of harassment based upon race, color, religion, age, gender, national origin, or disability. The Town of Payson will not tolerate discrimination or verbal or physical conduct by any employee which harasses, disrupts, or interferes with another person's work performance or which creates an intimidating, offensive, or hostile environment.

... any employee who retaliates against someone for filing a complaint, or for assisting someone who has filed a complaint, alleging or reporting any instance of sexual harassment, will be subject to appropriate discipline up to and including termination.

## ATTACHMENT B

### TOWN OF PAYSON - Sampling of Public Service Ethics Laws

CAUTION: These brief descriptions are provided for quick introductory purposes and cannot and do not present the full scope of these laws.

\*Violations of these laws may expose a Town official or employee to a variety of sanctions, including criminal penalties, personal financial liability (for damages and fines, as well as payment of costs and attorney's fees - both prosecution and defense), cancellation of contracts, and public embarrassment (for the official and her or his family and employer, and removal from office). For example, a Town official convicted of a felony may be fined up to \$150,000 for each violation and sent to prison for several years. A.R.S. § 13-801, -701. Conviction of a misdemeanor may result in a fine up to \$2,500 for each violation and jail sentence of up to six months. A.R.S. § 13-802, -707. This information is presented not to scare Town officials, but to help them by underscoring the seriousness of conducting the public's business properly.

<b>TOPIC</b>	<b>ARIZONA LAW</b>	<b>GENERAL SUMMARY</b> * (see above)	<b>PENALTIES &amp; SANCTIONS</b>
Bribery	A.R.S. § 13-2602; 38-444	It is illegal for you to solicit, accept, or agree to accept any benefit upon an understanding that it may influence your official conduct, or to ask for or receive any gratuity or reward (or promise thereof) for your official act.	Felony
Conflicts of interest (general)	A.R.S. § 38-501 thru -511	If you or any relative could benefit from your taking official action, then you must (1) <i>disqualify</i> yourself by not participating "in any manner" - not voting, not discussing, not anything, and (2) <i>disclose</i> that personal interest.	Felony or misdemeanor; more
Contracting with the Town	A.R.S. §§ 38-503, 34-1406 thru -1477	If you or any relative has a substantial interest in "any contract, sale, purchase or service" to the Town, then you must disclose that interest and "refrain from voting upon or participating in any manner."	Felony or misdemeanor, cancel contract
Conduct after Leaving Town Position ("Anti-Revolver Door")	A.R.S. § 38-504(A)	For 12 months after your Town service, you cannot represent another person for compensation before the Town in connection with any matter in which you personally participated in a substantial and material way.	Felony or misdemeanor

Confidential Information (Disclosure/Use of)	A.R.S. § 38-504(B)	During and for two years after your Town service, it is illegal for you to disclose or use for personal profit any confidential information you learned in the course of your duties.	Felony or misdemeanor; more
Discrimination and Favoritism	Constitutions, plus statutes; A.R.S. § 38-231(G)	It is illegal to discriminate based on race, color, gender, national origin, religion, age, or physical or mental disability; plus, in your Loyalty Oath you pledged to "faithfully and <i>impartially</i> discharge the duties of ... office."	Attorney's fees, damages, more
E-mail	A.R.S. § 39-12-1; 38-431 <i>et seq.</i>	Your e-mail communications are subject to the Public Records Law, and improper e-mail involving a quorum of the members of a public body may violate the Open Meeting Law.	Attorney's fees, costs, more
Employment of Relatives ("Nepotism")	A.R.S. § 38-481	You may not be involved in the appointment or hiring of a relative (which is defined broadly to include your parents, siblings, spouse, children, grandchildren, grandparents, and all in-laws).	Misdemeanor
Employment - Discussion of Future Employment	A.R.S. § 38-503, -504(C)	If you engage in certain discussions about future employment, then it might trigger bribery or conflict of interest laws.	Felony or misdemeanor
Employment - Incompatible	A.R.S. § 38-505	Certain outside employment could trigger conflict of interest laws.	Depends on the facts
Employment - Representing Others Before the Town	A.R.S. § 38-504	During your Town service, it is illegal for you to represent another person for compensation in connection with any matter in which you will personally participate in a substantial and material way as a Town official.	Felony or misdemeanor

Entertainment (attending or participating in a cultural or sporting event)	A.R.S. § 41-1232.08(B) [only applies to Town Council]	It is illegal for the Mayor or a Council member to accept from a "compensate lobbyist" "an expenditure or single expenditure for <i>entertainment</i> " (defined broadly to mean not only <i>attending</i> any sporting or cultural event, but also <i>participating</i> in any cultural or sporting event, such as golf).	Misdemeanor
Extra compensation	A.R.S. § 38-505	It is illegal for any Town official to receive any money (except the salaries the Town pays the Mayor and Council members) or anything of value for any service rendered in connection with performing their official duties.	Felony or misdemeanor
Financial Disclosures (NOTE: Council only)	A.R.S. § 38-545 (which requires Town adopt same)	It is illegal for Council members to fail to file, or knowingly file an incomplete personal financial disclosure statement (which IS designed to help you identify and avoid potential conflicts of interest).	Misdemeanor
Gifts and Things of Value		Gifts worth more than \$25 must be reported to the Town Clerk.	Ethics Code investigation and public report
Misuse of Public Resources (see "Theft" below)	A.R.S. § 13-1802, -2310, -2316	Town officials may use Town resources only to the extent those resources are available to the public (e.g., if the public is charged \$2.00 per page for copying, then a Town official must pay the same). Otherwise, it is theft (see below).	Felony or misdemeanor
Open Meetings	A.R.S. § 38-431 thru -431.09	"It is the policy of this state that meetings of public bodies be conducted openly and interpretations of this [law] shall construe any provision in favor of open and public meetings."	Action null and void; attorney's fees; more
Political Activities	A.R.S. § 9-500.14	It is illegal to use Town personnel, resources to influence non-bond elections.	

Public Monies	A.R.S. § 35-301	If you handle or spend public monies, then you need to be extra cautious and recognize that special rules and regulations apply, including the Town's procurement processes.	Felony
Public Records - Access to	A.R.S. § 39-121, <i>et seq.</i> , plus more	Arizona law has a strong presumption that records shall be open to public inspection, but with hundreds of exemptions. You should seek immediate help from the Town Attorney if you get a public records request.	Range; attorney's fees and costs
Public Records - Tampering with	A.R.S. § 13-2407	It is illegal to "tamper with a public record" by making a false document purporting to be a public record, altering or making a false entry, destroying, removing, hiding, or otherwise impairing a public record.	Felony
Solicitation of Gifts and Things of Value	A.R.S. § 38-504(C)	It is illegal to use or attempt to use your official position to get any valuable thing or benefit that you would not ordinarily get. (See also "Bribery" and "Gifts" above.)	Felony or misdemeanor
Theft of Town Property, Resources, or Services	A.R.S. § 13-1802	Unauthorized (such as personal) use of Town resources (facilities, equipment, personnel, supplies) can be considered "theft," which is the taking or unauthorized use of another person's property (including the Town's).	Felony or misdemeanor
Travel	A.R.S. § 13-1803, -2407	Unauthorized use of a Town vehicle can constitute "unlawful use of means of transportation," and submitting a false travel or expense report is "tampering with a public record."	Felony

## ATTACHMENT C

### Town of Payson Personal Interest Disclosure Form for Employees

Pursuant to the Town of Payson Ethical Standards for Town Employees, all Town employees must complete and submit this Personal Interest Disclosure Form to the Human Resources department annually upon the occasion of their annual ethics training. The purpose of the form is to help Town employees by alerting and reminding them of their need to avoid participating in any manner on behalf of the Town of Payson when a conflict arises between their official Town duties and their personal interests.

Two definitions are very important because violating Arizona's conflicts of interest laws is a criminal offense and can lead to serious consequences.

1. Arizona law requires that if a Town employee or his or her relative has a substantial interest (as defined by state law) in an official decision, then that employee "shall make known that interest in the official records of the public agency and shall refrain from *participating in any manner* as an employee" regarding that matter. (A.R.S. § 38-503). By listing "otherwise participating in any manner", the Legislature has made clear that if you have a conflict, then you must immediately refrain from taking *any* action in your official position; you may not do anything - talk, discuss, write, wink, or nod - to try to influence the decision or any decision-makers.

2. The definition of "relative" includes your "spouse, child, child's child [grandchildren], parent, grandparents, brother or sister [and step-brother or step-sister], and their spouses and the parent, brother, sister or child of a spouse." A.R.S. § 38-502(9).

If, after you complete this form, another substantial interest surfaces that was not anticipated, then you are obligated to immediately refrain from participating in the decision-making process and, within three business days, update this form to disclose the interest in the Town Clerk's Office. If you have any questions, please contact the Town Attorney's Office with as much lead time as possible.

1. Identify the decision or other matter in which you or a relative may have a substantial interest. (Attach another page if more space is needed.)

2. Describe each substantial interest referred to above. (Attach another page if more space is needed.)

Statement of Disqualification

To avoid any possible conflict of interest, I will refrain from participating in any manner in the matter(s) identified above.

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **APPENDIX “B”**

### **UNIFORMED SERVICES EMPLOYMENT**

#### **AND**

### **REEMPLOYMENT RIGHTS ACT OF 1994**

USERRA is a federal statute that protects service members’ and veterans’ civilian employment rights. Among other things, under certain conditions, USERRA requires employers to put individuals back to work in their civilian jobs after military service. USERRA also protects service members from discrimination in the workplace based on their military service or affiliation.

#### **SUBCHAPTER I--GENERAL**

##### **§ 4301. Purposes; sense of Congress**

(a) The purposes of this chapter are--

(1) to encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(3) to prohibit discrimination against persons because of their service in the uniformed services.

(b) It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.

##### **§ 4302. Relation to other law and plans or agreements**

(a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

(b) This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

### § 4303. Definitions

For the purposes of this chapter--

(1) The term 'Attorney General' means the Attorney General of the United States or any person designated by the Attorney General to carry out a responsibility of the Attorney General under this chapter.

(2) The term 'benefit', 'benefit of employment', or 'rights and benefits' means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(3) The term 'employee' means any person employed by an employer. Such term includes any person who is a citizen, national or permanent resident alien of the United States employed in a workplace in a foreign country by an employer that is an entity incorporated or otherwise organized in the United States or that is controlled by an entity organized in the United States, within the meaning of Section 4319(c) of this title.

(4)(A) Except as provided in subparagraphs (B) and (C), the term 'employer' means any person, institution, organization, or other entity that pays salary or wages for work performed or that has control over employment opportunities, including--

(I) a person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities;

(ii) the Federal Government;

(iii) a State;

(iv) any successor in interest to a person, institution, organization, or other entity referred to in this subparagraph; and

(v) a person, institution, organization, or other entity that has denied initial employment in violation of section 4311.

(B) In the case of a National Guard technician employed under section 709 of title 32, the term 'employer' means the adjutant general of the State in which the technician is employed.

(C) Except as an actual employer of employees, an employee pension benefit plan described in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.

1002(2)) shall be deemed to be an employer only with respect to the obligation to provide benefits described in section 4318.

(5) The term 'Federal executive agency' includes the United States Postal Service, the Postal Rate Commission, any non-appropriated fund instrumentality of the United States, any Executive agency (as that term is defined in section 105 of title 5) other than an agency referred to in section 2302(a)(2)(C)(ii) of title 5, and any military department (as that term is defined in section 102 of title 5) with respect to the civilian employees of that department.

(6) The term 'Federal Government' includes any Federal executive agency, the legislative branch of the United States, and the judicial branch of the United States.

(7) The term 'health plan' means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(8) The term 'notice' means (with respect to subchapter II) any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

(9) The term 'qualified', with respect to an employment position, means having the ability to perform the essential tasks of the position.

(10) The term 'reasonable efforts', in the case of actions required of an employer under this chapter, means actions, including training provided by an employer, that do not place an undue hardship on the employer.

(11) Notwithstanding section 101, the term 'Secretary' means the Secretary of Labor or any person designated by such Secretary to carry out an activity under this chapter.

(12) The term 'seniority' means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

(13) The term 'service in the uniformed services' means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes: active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(14) The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof).

(15) The term 'undue hardship', in the case of actions taken by an employer, means actions requiring significant difficulty or expense, when considered in light of--

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(16) The term 'uniformed services' means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

#### **§ 4304. Character of service**

A person's entitlement to the benefits of this chapter by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.

(2) A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned.

(3) A dismissal of such person permitted under section 1161(a) of title 10.

(4) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.

## **SUBCHAPTER II--EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS**

### **§ 4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited**

(a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

(c) An employer shall be considered to have engaged in actions prohibited-

(1) under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

(2) under subsection (b), if the person's (A) action to enforce a protection afforded any person under this chapter, (B) testimony or making of a statement in or in connection with any proceeding under this chapter, (C) assistance or other participation in an investigation under this chapter, or (D) exercise of a right provided for in this chapter, is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right.

(d) The prohibitions in subsections (a) and (b) shall apply to any position of employment, including a position that is described in section 4312(d)(1)(C) of this title.

### **§ 4312. Reemployment rights of persons who serve in the uniformed services**

(a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if-

-

(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

(3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service--

(1) that is required, beyond five years, to complete an initial period of obligated service;

(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3) performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is--

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress. as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services; or

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10.

(d)(1) An employer is not required to reemploy a person under this chapter if--

(A) the employer's circumstances have so changed as to make such reemployment impossible or unreasonable;

(B) in the case of a person entitled to reemployment under subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313, such employment would impose an undue hardship on the employer;

or

(C) the employment from which the person leaves to serve in the uniformed services is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

(2) In any proceeding involving an issue of whether--

(A) any reemployment referred to in paragraph (1) is impossible or unreasonable because of a change in an employer's circumstances,

(B) any accommodation, training, or effort referred to in subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313 would impose an undue hardship on the employer, or

(C) the employment referred to in paragraph (1)(C) is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period, the employer shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or non-recurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period.

(e)(1) Subject to paragraph (2), a person referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the employer referred to in such subsection of the person's intent to return to a position of employment with such employer as follows:

(A) In the case of a person whose period of service in the uniformed services was less than 31 days, by reporting to the employer--

(I) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or

(ii) as soon as possible after the expiration of the eight-hour period referred to in clause (I), if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.

(B) In the case of a person who is absent from a position of employment for a period of any length for the purposes of an examination to determine the person's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (A).

(C) In the case of a person whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the employer not later than 14 days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the person, the next first full calendar day when submission of such application becomes possible.

(D) In the case of a person whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the employer not later than 90 days after the completion of the period of service.

(2)(A) A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's employer (in the case of a person described in subparagraph (A) or (B) of paragraph (1)) or submit an application for reemployment with such employer (in the case of a person described in subparagraph (C) or (D) of such paragraph). Except as provided in subparagraph (B), such period of recovery may not exceed two years.

(B) Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the period specified in subparagraph (A) impossible or unreasonable.

(3) A person who fails to report or apply for employment or reemployment within the appropriate period specified in this subsection shall not automatically forfeit such person's entitlement to the rights and benefits referred to in subsection (a) but shall be subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

(f)(1) A person who submits an application for reemployment in accordance with subparagraph (C) or (D) of subsection (e)(1) or subsection (e)(2) shall provide to the person's employer (upon the request of such employer) documentation to establish that--

(A) the person's application is timely;

(B) the person has not exceeded the service limitations set forth in subsection (a)(2) (except as permitted under subsection (c)); and

(C) the person's entitlement to the benefits under this chapter has not been terminated pursuant to section 4304.

(2) Documentation of any matter referred to in paragraph (1) that satisfies regulations prescribed by the Secretary shall satisfy the documentation requirements in such paragraph.

(3)(A) Except as provided in subparagraph (B), the failure of a person to provide documentation that satisfies regulations prescribed pursuant to paragraph (2) shall not be a basis for denying reemployment in accordance with the provisions of this chapter if the failure occurs because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements referred to in subparagraphs (A), (B), and (C) of paragraph (1), the employer of such person may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

(B) An employer who reemploys a person absent from a position of employment for more than 90 days may require that the person provide the employer with the documentation referred to in subparagraph (A) before beginning to treat the person as not having incurred a break in service for pension purposes under section 4318(a)(2)(A).

(4) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

(g) The right of a person to reemployment under this section shall not entitle such person to retention, preference, or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

(h) In any determination of a person's entitlement to protection under this chapter, the timing, frequency, and duration of the person's training or service, or the nature of such training or service (including voluntary service) in the uniformed services, shall not be a basis for denying protection of this chapter if the service does not exceed the limitations set forth in subsection (c) and the notice requirements established in subsection (a)(1) and the notification requirements established in subsection (e) are met.

### **§ 4313. Reemployment positions**

(a) Subject to subsection (b) (in the case of any employee) and sections 4314 and 4315 (in the case of an employee of the Federal Government), a person entitled to reemployment under section 4312, upon completion of a period of service in the uniformed services, shall be promptly reemployed in a position of employment in accordance with the following order of priority:

(1) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for less than 91 days--

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, only if the person is not qualified to perform the duties of the position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

(2) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for more than 90 days--

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

(3) In the case of a person who has a disability incurred in, or aggravated during, such service, and who (after reasonable efforts by the employer to accommodate the disability) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service--

(A) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or

(B) if not employed under subparagraph (A), in a position which is the nearest approximation to a position referred to in subparagraph (A) in terms of seniority, status, and pay consistent with circumstances of such person's case.

(4) In the case of a person who (A) is not qualified to be employed in (I) the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or (ii) in the position of employment in which such person was employed on the date of the commencement of the service in the uniform services for any reason (other than disability incurred in, or aggravated during, service in the uniformed services), and (B) cannot become qualified with reasonable efforts by the employer, in any other position which is the nearest approximation to a position referred to first in clause (A)(I) and then in clause (A)(ii) which such person is qualified to perform, with full seniority.

(b)(1) If two or more persons are entitled to reemployment under section 4312 in the same position of employment and more than one of them has reported for such reemployment, the person who left the position first shall have the prior right to reemployment in that position.

(2) Any person entitled to reemployment under section 4312 who is not reemployed in a position of employment by reason of paragraph (1) shall be entitled to be reemployed as follows:

(A) Except as provided in subparagraph (B), in any other position of employment referred to in subsection (a)(1) or (a)(2), as the case may be (in the order of priority set out in the applicable subsection), that provides a similar status and pay to a position of employment referred to in paragraph (1) of this subsection, consistent with the circumstances of such person's case, with full seniority.

(B) In the case of a person who has a disability incurred in, or aggravated during, a period of service in the uniformed services that requires reasonable efforts by the employer for the person to be able to perform the duties of the position of employment, in any other position referred to in subsection (a)(3) (in the order of priority set out in that subsection) that provides a similar status and pay to a position referred to in paragraph (1) of this subsection, consistent with circumstances of such person's case, with full seniority.

#### **§ 4314. Reemployment by the Federal Government**

(a) Except as provided in subsections (b), (c), and (d), if a person is entitled to reemployment by the Federal Government under section 4312, such person shall be reemployed in a position of employment as described in section 4313.

(b)(1) If the Director of the Office of Personnel Management makes a determination described in paragraph (2) with respect to a person who was employed by a Federal executive agency at the time the person entered the service from which the person seeks reemployment under this section, the Director shall--

(A) identify a position of like seniority, status, and pay at another Federal executive agency that satisfies the requirements of section 4313 and for which the person is qualified; and

(B) ensure that the person is offered such position.

(2) The Director shall carry out the duties referred to in subparagraphs (A) and (B) of paragraph (1) if the Director determines that--

(A) the Federal executive agency that employed the person referred to in such paragraph no longer exists and the functions of such agency have not been transferred to another Federal executive agency; or

(B) it is impossible or unreasonable for the agency to reemploy the person. (c) If the employer of a person described in subsection (a) was, at the time such person entered the service from which such person seeks reemployment under this section, a part of the judicial branch or the legislative

branch of the Federal Government, and such employer determines that it is impossible or unreasonable for such employer to reemploy such person, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

(d) If the adjutant general of a State determines that it is impossible or unreasonable to reemploy a person who was a National Guard technician employed under section 709 of title 32, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

### **§ 4315. Reemployment by certain Federal agencies**

(a) The head of each agency referred to in section 2302(a)(2)(C)(ii) of title 5 shall prescribe procedures for ensuring that the rights under this chapter apply to the employees of such agency.

(b) In prescribing procedures under subsection (a), the head of an agency referred to in that subsection shall ensure, to the maximum extent practicable, that the procedures of the agency for reemploying persons who serve in the uniformed services provide for the reemployment of such persons in the agency in a manner similar to the manner of reemployment described in section 4313.

(c)(1) The procedures prescribed under subsection (a) shall designate an official at the agency who shall determine whether or not the reemployment of a person referred to in subsection (b) by the agency is impossible or unreasonable.

(2) Upon making a determination that the reemployment by the agency of a person referred to in subsection (b) is impossible or unreasonable, the official referred to in paragraph (1) shall notify the person and the Director of the Office of Personnel Management of such determination.

(3) A determination pursuant to this subsection shall not be subject to judicial review.

(4) The head of each agency referred to in subsection (a) shall submit to the Select Committee on Intelligence and the Committee on Veterans' Affairs of the Senate and the Permanent Select Committee on Intelligence and the Committee on Veterans' Affairs of the House of Representatives on an annual basis a report on the number of persons whose reemployment with the agency was determined under this subsection to be impossible or unreasonable during the year preceding the report, including the reason for each such determination.

(d)(1) Except as provided in this section, nothing in this section, section 4313, or section 4325 shall be construed to exempt any agency referred to in subsection (a) from compliance with any other substantive provision of this chapter.

(2) This section may not be construed--

(A) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter, alternative employment in the Federal Government under this chapter, or information relating to the rights and obligations of employee and Federal agencies under this chapter; or

(B) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

(e) The Director of the Office of Personnel Management shall ensure the offer of employment to a person in a position in a Federal executive agency on the basis described in subsection (b) if--

(1) the person was an employee of an agency referred to in section 2302(a)(2)(C)(ii) of title 5 at the time the person entered the service from which the person seeks reemployment under this section;

(2) the appropriate officer of the agency determines under subsection (c) that reemployment of the person by the agency is impossible or unreasonable; and

(3) the person submits an application to the Director for an offer of employment under this subsection.

#### **§ 4316. Rights, benefits, and obligations of persons absent from employment for service in a uniformed service**

(a) A person who is reemployed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

(b)(1) Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be--

(A) deemed to be on furlough or leave of absence while performing such service; and

(B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

(2)(A) Subject to subparagraph (B), a person who--

(I) is absent from a position of employment by reason of service in the uniformed services, and

(ii) knowingly provides written notice of intent not to return to a position of employment after service in the uniformed service, is not entitled to rights and benefits under paragraph (1)(B).

(B) For the purposes of subparagraph (A), the employer shall have the burden of proving that a person knowingly provided clear written notice of intent not to return to a position of employment after service in the uniformed service and, in doing so, was aware of the specific rights and benefits to be lost under subparagraph (A).

(3) A person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

(4) Such person may be required to pay the employee cost, if any, of any funded benefit continued pursuant to paragraph (1) to the extent other employees on furlough or leave of absence are so required.

(5) The entitlement of a person to coverage under a health plan is provided for under section 4317.

(6) The entitlement of a person to a right or benefit under an employee pension benefit plan is provided for under section 4318.

(c) A person who is reemployed by an employer under this chapter shall not be discharged from such employment, except for cause--

(1) within one year after the date of such reemployment, if the person's period of service before the reemployment was more than 180 days; or

(2) within 180 days after the date of such reemployment, if the person's period of service before the reemployment was more than 30 days but less than 181 days.

(d) Any person whose employment with an employer is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of service any vacation, annual, or similar leave with pay accrued by the person before the commencement of such service. No employer may require any such person to use vacation, annual, or similar leave during such period of service.

(e)(1) An employer shall grant an employee who is a member of a reserve component an authorized leave of absence from a position of employment to allow that employee to perform funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(e)(2) For the purposes of section 4312(e)(1) of this title, an employee who takes an authorized leave of absence under paragraph (1) is deemed to have notified the employer of the employee's intent to return to such position of employment.

## § 4317. Health plans

(a)(1) In any case in which a person (or the person's dependents) has coverage under a health plan in connection with the person's position of employment, including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), and such person is absent from such position of employment by reason of service in the uniformed services, or such person becomes eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title, the plan shall provide that the person may elect to continue such coverage as provided in this subsection. The maximum period of coverage of a person and the person's dependents under such an election shall be the lesser of--

(A) the 24-month period beginning on the date on which the person's absence begins; or

(B) the day after the date on which the person fails to apply for or return to a position of employment, as determined under section 4312(e).

(2) A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium under the plan (determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986) associated with such coverage for the employer's other employees, except that in the case of a person who performs service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, for such coverage.

(3) In the case of a health plan that is a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability under the plan for employer contributions and benefits arising under this paragraph shall be allocated--

(A) by the plan in such manner as the plan sponsor shall provide; or

(B) if the sponsor does not provide--

(I) to the last employer employing the person before the period served by the person in the uniformed services, or

(ii) if such last employer is no longer functional, to the plan.

(b)(1) Except as provided in paragraph (2), in the case of a person whose coverage under a health plan was terminated by reason of service in the uniformed services, or by reason of the person's having become eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment under this chapter if an exclusion or waiting period would not have been imposed under a health plan had coverage of such person by such plan not been terminated as a result of such service or eligibility. This paragraph applies to the person who is reemployed and to any individual who is covered by such plan by reason of the reinstatement of the coverage of such person.

(2) Paragraph (1) shall not apply to the coverage of any illness or injury determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

(3) In the case of a person whose coverage under a health plan is terminated by reason of the person having become eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title but who subsequently does not commence a period of active duty under the order to active duty that established such eligibility because the order is canceled before such active duty commences, the provisions of paragraph (1) relating to any exclusion or waiting period in connection with the reinstatement of coverage under a health plan shall apply to such person's continued employment, upon the termination of such eligibility for medical and dental care under chapter 55 of title 10 that is incident to the cancellation of such order, in the same manner as if the person had become reemployed upon such termination of eligibility.

### **Sec. 4318. Employee pension benefit plans**

(a)(1)(A) Except as provided in subparagraph (B), in the case of a right provided pursuant to an employee pension benefit plan (including those described in sections 3(2) and 3(33) of the Employee Retirement Income Security Act of 1974) or a right provided under any Federal or State law governing pension benefits for governmental employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

(B) In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 8432b of title 5. The first sentence of this subparagraph shall not be construed to affect any other right or benefit under this chapter.

(2)(A) A person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services.

(B) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the employer or employers maintaining the plan for the purpose of determining the non-forfeatability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

(b)(1) An employer reemploying a person under this chapter shall, with respect to a period of service described in subsection (a)(2)(B), be liable to an employee pension benefit plan for funding any obligation of the plan to provide the benefits described in subsection (a)(2) and shall allocate the amount of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of determining the amount of such liability and any obligation of the plan, earnings and forfeitures shall not be included. For purposes of determining the amount of such liability and for purposes of section 515 of the Employee Retirement Income Security Act of 1974 or any similar Federal or State law governing pension benefits for governmental employees, service in the uniformed services that is deemed under subsection (a) to be service with the employer shall be

deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability of the plan described in this paragraph shall be allocated--

(A) by the plan in such manner as the sponsor maintaining the plan shall provide; or

(B) if the sponsor does not provide--

(I) to the last employer employing the person before the period served by the person in the uniformed services, or

(ii) if such last employer is no longer functional, to the plan.

(2) A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any payment to the plan described in this paragraph shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's services in the uniformed services, such payment period not to exceed five years.

(3) For purposes of computing an employer's liability under paragraph (1) or the employee's contributions under paragraph (2), the employee's compensation during the period of service described in subsection (a)(2)(B) shall be computed--

(A) at the rate the employee would have received but for the period of service described in subsection (a)(2)(B), or

(B) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

(c) Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide information, in writing, of such reemployment to the administrator of such plan.

## **Sec. 4319. Employment and reemployment rights in foreign countries.**

(a) **LIABILITY OF CONTROLLING UNITED STATES EMPLOYER OF FOREIGN ENTITY-** If an employer controls an entity that is incorporated or otherwise organized in a foreign country, any denial of employment, reemployment, or benefit by such entity shall be presumed to be by such employer.

(b) **INAPPLICABILITY TO FOREIGN EMPLOYER-** This subchapter does not apply to foreign operations of an employer that is a foreign person not controlled by or United States employer.

(c) **DETERMINATION OF CONTROLLING EMPLOYER-** For the purpose of this section, the determination of whether an employer controls an entity shall be based upon the interrelations of operations, common management, centralized control of labor relations, and common ownership or financial control of the employer and the entity.

(d) **EXEMPTION-** Notwithstanding any other provision of this subchapter, an employer, or an entity controlled by an employer, shall be exempt from compliance with any of section 4311 through 4318 of this title with respect to an employee in a workplace in a foreign country, if compliance with that section would cause such employer, or such entity controlled by an employer, to violate the law of the foreign country in which the workplace is located.'

## **SUBCHAPTER III--PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION**

### **§ 4321. Assistance in obtaining reemployment or other employment rights or benefits**

The Secretary (through the Veterans' Employment and Training Service) shall provide assistance to any person with respect to the employment and reemployment rights and benefits to which such person is entitled under this chapter. In providing such assistance, the Secretary may request the assistance of existing Federal and State agencies engaged in similar or related activities and utilize the assistance of volunteers.

### **§ 4322. Enforcement of employment or reemployment rights**

(a) A person who claims that--

(1) such person is entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer; and

(2)(A) such employer has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter; or

(B) in the case that the employer is a Federal executive agency, such employer or the Office of Personnel Management has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter, may file a complaint with the Secretary in accordance with subsection (b), and the Secretary shall investigate such complaint.

(b) Such complaint shall be in writing, be in such form as the Secretary may prescribe, include the name and address of the employer against whom the complaint is filed, and contain a summary of the allegations that form the basis for the complaint.

(c) The Secretary shall, upon request, provide technical assistance to a potential claimant with respect to a complaint under this subsection, and when appropriate, to such claimant's employer.

(d) The Secretary shall investigate each complaint submitted pursuant to subsection (a). If the Secretary determines as a result of the investigation that the action alleged in such complaint occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.

(e) If the efforts of the Secretary with respect to any complaint filed under subsection (a) do not resolve the complaint, the Secretary shall notify the person who submitted the complaint of--

(1) the results of the Secretary's investigation; and

(2) the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4323 (in the case of a person submitting a complaint against a State or private employer) or section 4324 (in the case of a person submitting a complaint against a Federal executive agency or the Office of Personnel Management).

(f) This subchapter does not apply to any action relating to benefits to be provided under the Thrift Savings Plan under title 5.

### **§ 4323. Enforcement of rights with respect to a State or private employer**

(a) ACTION FOR RELIEF--(1) A person who receives from the Secretary a notification pursuant to section 4322(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. If the Attorney General is responsibly satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for relief under this chapter for such person. In the case of such an action against a State (as an employer), the action shall be brought in the name of the United States as the plaintiff in the action.

(2) A person may commence an action for relief with respect to a complaint against a State (as an employer) or a private employer if the person--

(A) has chosen not to apply to the Secretary for assistance under section 4322(a) of this title;

(B) has chosen not to request that the Secretary refer the complaint to the Attorney General under paragraph (1); or

(C) has been refused representation by the Attorney General with respect to the complaint under such paragraph .

(b) JURISDICTION-(1) In the case of an action against a State (as an employer) or a private employer commenced by the United States, the district courts of the United States shall have jurisdiction over the action.

(2) In the case of action against a State (as an employer) by a person, the action may be brought in a State court of competent jurisdiction in accordance with the laws of the State.

(3) In the case of an action against a private employer by a person, the district courts of the United States shall have jurisdiction of the action.

(c) VENUE-(1) In the case of an action by the United States against a State (as an employer), the action may proceed in the United States district court for any district in which the State exercises any authority or carries out any function.

(2) In the case of an action against a private employer, the action may proceed in the United States district court for any district in which the private employer of the person maintains a place of business.

(d) REMEDIES-(1) In any action under this section, the court may award relief as follows:

(A) The court may require the employer to comply with the provisions of this chapter.

(B) The court may require the employer to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter.

(C) The court may require the employer to pay the person an amount equal to the amount referred to in subparagraph (B) as liquidated damages, if the court determines that the employer's failure to comply with the provisions of this chapter was willful.

(2)(A) Any compensation awarded under subparagraph (B) or (C) of paragraph (1) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for under this chapter.

(B) In the case of an action commenced in the name of the United States for which the relief includes compensation awarded under subparagraph (B) or (C) of paragraph (1), such compensation shall be held in a special deposit account and shall be paid, on order of the Attorney General, directly to the person. If the compensation is not paid to the person because of inability to do so within a period of 3 years, the compensation shall be converted into the Treasury of the United States as miscellaneous receipts.

(3) A State shall be subject to the same remedies, including prejudgment interest, as may be imposed upon any private employer under this section.

(e) EQUITY POWERS- The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights of benefits of persons under this chapter.

(f) STANDING- An action under this chapter may be initiated only by a person claiming rights or benefits under this chapter under subsection (a) or by the United States under subsection (a)(1).

(g) RESPONDENT- In any action under this chapter, only an employer or a potential employer, as the case may be, shall be a necessary party respondent.

(h) FEES, COURT COSTS- (1) No fees or court costs may be charged or taxed against any person claiming rights under this chapter.

(2) In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(2) who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.

(i) INAPPLICABILITY OF STATE STATUTE OF LIMITATIONS- No State statute of limitations shall apply to any proceeding under this chapter.

(j) DEFINITION- In this section, the term 'private employer' includes a political subdivision of a State.'

#### **§ 4324. Enforcement of rights with respect to Federal executive agencies**

(a)(1) A person who receives from the Secretary a notification pursuant to section 4322(e) may request that the Secretary refer the complaint for litigation before the Merit Systems Protection Board. The Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.

(2)(A) If the Special Counsel is reasonably satisfied that the person on whose behalf a complaint is referred under paragraph (1) is entitled to the rights or benefits sought, the Special Counsel (upon the request of the person submitting the complaint) may appear on behalf of, and act as attorney for, the person and initiate an action regarding such complaint before the Merit Systems Protection Board.

(B) If the Special Counsel declines to initiate an action and represent a person before the Merit Systems Protection Board under subparagraph (A), the Special Counsel shall notify such person of that decision.

(b) A person may submit a complaint against a Federal executive agency or the Office of Personnel Management under this subchapter directly to the Merit Systems Protection Board if that person--

- (1) has chosen not to apply to the Secretary for assistance under section 4322(a);
- (2) has received a notification from the Secretary under section 4322(e);
- (3) has chosen not to be represented before the Board by the Special Counsel pursuant to subsection (a)(2)(A); or
- (4) has received a notification of a decision from the Special Counsel under subsection (a)(2)(B).

(c)(1) The Merit Systems Protection Board shall adjudicate any complaint brought before the Board pursuant to subsection (a)(2)(A) or (b), without regard as to whether the complaint accrued before, on, or after October 13, 1994. A person who seeks a hearing or adjudication by submitting such a complaint under this paragraph may be represented at such hearing or adjudication in accordance with the rules of the Board.

(2) If the Board determines that a Federal executive agency or the Office of Personnel Management has not complied with the provisions of this chapter relating to the employment or reemployment of a person by the agency, the Board shall enter an order requiring the agency or Office to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by such person by reason of such lack of compliance.

(3) Any compensation received by a person pursuant to an order under paragraph (2) shall be in addition to any other right or benefit provided for by this chapter and shall not diminish any such right or benefit.

(4) If the Board determines as a result of a hearing or adjudication conducted pursuant to a complaint submitted by a person directly to the Board pursuant to subsection (b) that such person is entitled to an order referred to in paragraph (2), the Board may, in its discretion, award such person reasonable attorney fees, expert witness fees, and other litigation expenses.

(d)(1) A person adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board under subsection (c) may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision. Such petition and review shall be in accordance with the procedures set forth in section 7703 of title 5.

(2) Such person may be represented in the Federal Circuit proceeding by the Special Counsel unless the person was not represented by the Special Counsel before the Merit Systems Protection Board regarding such order or decision.

#### **§ 4325. Enforcement of rights with respect to certain Federal agencies**

(a) This section applies to any person who alleges that--

(1) the reemployment of such person by an agency referred to in subsection (a) of section 4315 was not in accordance with procedures for the reemployment of such person under subsection (b) of such section; or

(2) the failure of such agency to reemploy the person under such section was otherwise wrongful.

(b) Any person referred to in subsection (a) may submit a claim relating to an allegation referred to in that subsection to the inspector general of the agency which is the subject of the allegation. The inspector general shall investigate and resolve the allegation pursuant to procedures prescribed by the head of the agency.

(c) In prescribing procedures for the investigation and resolution of allegations under subsection (b), the head of an agency shall ensure, to the maximum extent practicable, that the procedures are similar to the procedures for investigating and resolving complaints utilized by the Secretary under section 4322(d).

(d) This section may not be construed--

(1) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter, or information relating to the rights and obligations of employees and Federal agencies under this chapter; or

(2) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

#### **§ 4326. Conduct of investigation; subpoenas**

(a) In carrying out any investigation under this chapter, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to and the right to interview persons with information relevant to the investigation and shall have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or employer that the Secretary considers relevant to the investigation.

(b) In carrying out any investigation under this chapter, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

(c) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or employer to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this chapter and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

(d) Subsections (b) and (c) shall not apply to the legislative branch or the judicial branch of the United States.

## **SUBCHAPTER IV--MISCELLANEOUS PROVISIONS**

### **§ 4331. Regulations**

(a) The Secretary (in consultation with the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter with regard to the application of this chapter to States, local governments, and private employers.

(b)(1) The Director of the Office of Personnel Management (in consultation with the Secretary and the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter with regard to the application of this chapter to Federal executive agencies (other than the agencies referred to in paragraph (2)) as employers. Such regulations shall be consistent with the regulations pertaining to the States as employers and private employers, except that employees of the Federal Government may be given greater or additional rights.

(2) The following entities may prescribe regulations to carry out the activities of such entities under this chapter:

(A) The Merit Systems Protection Board.

(B) The Office of Special Counsel.

(C) The agencies referred to in section 2303(a)(2)(C)(ii) of title 5.

### **§ 4332. Reports**

The Secretary shall, after consultation with the Attorney General and the Special Counsel referred to in section 4324(a)(1) and no later than February 1, 2005, and annually thereafter, transmit to the Congress, a report containing the following matters for the fiscal year ending before such February 1:

(1) The number of cases reviewed by the Department of Labor under this chapter during the fiscal year for which the report is made.

(2) The number of cases referred to the Attorney General or the Special Counsel pursuant to section 4323 or 4324, respectively, during such fiscal year.

(3) The number of complaints filed by the Attorney General pursuant to section 4323 during such fiscal year.

(4) The nature and status of each case reported on pursuant to paragraph (1), (2), or (3).

(5) An indication of whether there are any apparent patterns of violation of the provisions of this chapter, together with an explanation thereof.

(6) Recommendations for administrative or legislative action that the Secretary, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to encourage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment.

**§ 4333. Outreach**

The Secretary, the Secretary of Defense, and the Secretary of Veterans Affairs shall take such actions as such Secretaries determine are appropriate to inform persons entitled to rights and benefits under this chapter and employers of the rights, benefits, and obligations of such persons and such employers under this chapter.

**§ 4334. Notice of rights and duties**

(a) Requirement to provide notice.--Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily place notices for employees.

(b) Content of notice.--The Secretary shall provide to employers the text of the notice to be provided under this section.

## **APPENDIX C**

### **Family and Medical Leave Act**

#### **PURPOSE**

This Appendix supplements Section 5.2 of the Town of Payson Personnel Policy Manual. This Appendix and Section 5.2 shall be interpreted and applied in compliance with the Family Medical Leave Act (FMLA) and the regulations adopted pursuant thereto. The stated intent of Congress is for employer and employee to work together in a spirit of mutual cooperation and respect to ensure the benefits of the FMLA for employees in a manner that accommodates the legitimate interests of the employer.

#### **CALCULATION OF 12-MONTH PERIOD**

The Town of Payson uses a rolling 12-month period measured backwards from the date an employee uses any FMLA leave to determine an employee's leave entitlement. This will be determined each time leave is requested by looking back over the immediately preceding 12-month period.

#### **QUALIFYING CIRCUMSTANCES/PAID LEAVE SUBSTITUTION**

Under the guidelines of the FMLA, the employer is required to grant leave to eligible employees provided the qualifying circumstances are present and documented. Each of these circumstances or events has certain qualifying definitions, conditions, and guidelines which must be considered in order to determine eligibility under the FMLA.

FMLA leave shall be granted for:

- 1) The birth and care of a newborn child, the placement of a child for adoption or foster care requiring State action.

The right to take leave under FMLA applies equally to male and female employees; a father or a mother can take family leave for the birth and care of a newborn child or the placement of a child for adoption or foster care. Absent unusual circumstances the birth or placement of the child will initiate the start of the 12-week leave period. Entitlement to take leave for the birth or placement of a child expires at the end of the 12-month period following the birth or placement.

The period of childbirth and recovery is considered as a period of temporary disability for the birth mother and is specifically described in the legislative history of the FMLA as "the employee's serious health condition" for which medical leave may be used. Medical leave can be used for the temporary period of disability in which the birth mother is unable to perform the duties of the job as certified by a physician consistent with the policy governing any other temporary disability; under the FMLA prenatal care is also considered as "a serious health condition" for which medical leave can be used.

- 2) To care for the employee's spouse, child or parent with a serious health condition.
- 3) Because of a serious health condition that makes the employee unable to perform the functions of his/her position.
- 4) To care for a member of the armed forces, including members of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.
- 5) To handle the urgent needs related to a family member's current active military duty or a call to active military duty (once this provision of the FMLA is implemented)

#### **KEY DEFINITIONS**

In order to determine eligibility under the FMLA, it is important to understand the key definitions of qualifying relationships and circumstances.

Spouse is defined as husband or wife as defined under state law; unmarried domestic partners do not qualify for family leave to care for their partners.

Child is defined as a biological, adopted or foster child, stepchild, legal ward or a child of a person having day-to-day care for the child under 18 years of age. Child may also include a son or a daughter who is 18 or more years of age if he/she is incapable of self-care because of a physical or mental disability.

Parent includes the biological parent of an employee, or an individual who stood in the place of a parent when the employee was a child, regardless of the existence of a legal relationship. Parents-in-law are not included in this term.

Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:

- 1) Any period of incapacity or treatment in connection with or subsequent to inpatient care in a hospital, hospice or residential medical facility.
- 2) Any period of incapacity requiring absence from work, school or other regular daily activities of more than three calendar days that also involves continuing treatment by or under the supervision of a health care provider.
- 3) Continuing treatment by or under the supervision of a health care provider for a chronic or long-term health condition that is incurable or so serious that if not treated would likely result in a period of incapacity of more than three calendar days, or for prenatal care (see section above).

Continued treatment by a health care provider is defined as the employee or family member being treated two or more times for the injury or illness by a health care provider; the employee or family member being treated on at least one occasion which results in a regimen of continuing treatment under the supervision of a provider (medication, therapy) to resolve the condition; or the employee or family member being under the continuing supervision of, but not necessarily being actively treated by, a health care provider due to a serious long term or chronic condition or disability which cannot be cured (such as Alzheimer's, terminal disease) but which may not require active treatment. Treatments for allergies, stress and substance abuse are covered by this clause if all the conditions of this regulation are met; however, the inclusion of substance abuse does not prevent an employer from taking action against an employee who is unable to perform the functions of the job due to substance abuse.

It is not necessary for the employee to specifically request leave as FMLA qualifying; if the qualifying conditions are present the Town of Payson can designate the leave as FMLA leave and must so notify the employee immediately.

#### **MEDICAL CERTIFICATION/ELIGIBILITY REQUIREMENTS**

An employee is considered to be "unable to perform the essential functions of the position of the employee", and therefore entitled to take FMLA leave, where the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA) and its regulations. The employer has the option to provide a statement of the essential functions of the job for the provider to review in the certification process.

An employee is considered to be "needed to care for" a family member if the health care provider finds that the employee is needed to provide physical and psychological care when the family member is unable to care for his or her own basic medical, hygienic, nutritional or safety needs, or is unable to transport himself/herself to the doctor.

In any case the health care provider's statement (see attached) should include the diagnosis of the serious health condition and the date it commenced, the probable duration of the condition, a brief statement outlining the course of care that will be followed (number of visits, frequency/duration of treatment), whether hospitalization will be required and a statement as to whether the employee is unable to work or unable to perform the essential functions of the job or how/why the employee is needed to provide care to the family member.

The Town of Payson may require the employee to obtain a second opinion or third opinion or periodic recertification at the expense of the Town of Payson; the Town of Payson may designate the provider furnishing the second or third opinion or recertification but it may not be a provider regularly utilized by the Town of Payson.

Employees may also be required to report periodically to the Town of Payson on their status and their intention to return to work.

### **INTERMITTENT/REDUCED SCHEDULE LEAVE**

FMLA leave may be taken "intermittently" or on a reduced leave schedule when medically necessary to care for a family member or for the employee's own serious health condition and when approved by the Town of Payson.

Intermittent leave may include periods of time from an hour to several weeks, such as might be necessary for medical treatment. Reduced schedule leave is leave that would reduce the employee's usual number of working days per week or hours per workday. Intermittent or reduced schedule leave is subtracted from the total of 12 weeks of unpaid leave to which the employee is entitled under the FMLA by the actual amount of leave the employee has taken.

The employee is required to arrange for intermittent leave for scheduled medical treatment in advance with as much consideration for the business of the employer as possible. In addition, if an employee requests intermittent leave or reduced schedule leave, the Town of Payson may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than the employee's regular position. The alternative position must have equivalent pay and benefits but need not have equivalent duties so that the Town of Payson may transfer the employee to a lower position at the employee's same rate of pay.

### **UNLAWFUL DISCRIMINATION**

It is unlawful for any individual to discriminate against, interfere with, or deny the exercise of or the attempt to exercise any right under the FMLA.

## APPENDIX D

### Computer, E-mail, and Internet Policy

#### PURPOSE

The objective for providing access to computer systems (Desktops and Notebooks) and networks owned or operated by the Town of Payson is to enable Town Officials and Town Staff to better serve their internal and external customers. This can be achieved by enabling them to communicate via electronic mail with customers (citizens), vendors, council members, and peers. Besides e-mail capabilities, users are able to utilize the wealth of research information that is available on the internet. This guideline establishes the parameters of computer, internet and e-mail usage for all Town owned or operated computers and peripheral devices.

#### GUIDELINES

The Town reserves the right to inspect e-mail, computer files, downloaded files/programs, internet history, and other electronic files not made confidential by law at any time on Town owned equipment.

Access to computer systems and networks owned or operated by the Town imposes certain responsibilities and obligations that are granted subject to Town policies as well as any applicable local, state, or federal laws.

This Policy applies to any use of a Town computer network.

#### GENERAL COMPUTER USE

Most functions a user performs while utilizing Town equipment and resources are considered public in nature. Users are accountable for any actions which cause them to violate this guideline. Any violations of this Policy by a Town employee may result in progressive discipline pursuant to the Town of Payson Personnel Policy Manual.

The Town reserves the right to utilize "Remote Control" software or other such facility, at any time, to view, modify, and control the screens, programs, and processor of any computer device attached either locally or remotely to the Town network.

#### Appropriate Uses of Computer and Network Resources.

Use of the supplied software and hardware to perform functions in user's normal course of business.

#### Inappropriate Uses of Computer and Network Resources.

Activities that violate local, state, or federal laws are prohibited. Actions that violate the public trust or hamper the ability of Information Technology (IT) staff to provide network support are not allowed.

Some examples of inappropriate use include, but are not limited to, the following:

1. Loading any new software onto a Town owned computer without the knowledge and consent of the IT staff. This includes wallpaper, screensavers, sound effects, and other software components. This does not include upgrades to authorized software.
2. Altering system hardware settings of a Town owned computer through any system setup or Windows utility.
3. Addition of peripheral devices to a Town owned computer without the knowledge and consent of the IT.
4. Revealing any system passwords to another employee or using the password of another.
5. Knowingly and falsely taking the identity of another employee while accessing any Town owned computer.
6. Changing the software or hardware settings on another user's computer.
7. Attempting to gain access to information, computer accounts, or other computing resources to which the employee is not authorized.
8. Damaging, altering, or tampering with others' data contained within the Town of Payson network,

- without the owner's approval and/or consent of the supervisor.
9. The use of profane, abusive, or threatening language in any electronic files or correspondence.
  10. Using a Town of Payson computer to conduct activities related to outside employment.
  11. Any action in which an employee knowingly adversely affects the operations of the network.
  12. Violating any copyright protection or license agreements for computer software.
  13. Allowing any non-Town employee (spouse, family member, etc.) to use any network attached device including desktops, notebooks, or other peripheral devices.
  14. Using an issued Town owned laptop for personal use away from Town network.

#### Computers shut down and security.

Each user should log off, lock or shutdown their PC at the end of their shift. Departmental exceptions to this policy are acceptable as required. An example of this would be computer aided dispatch and 9-1-1 computers.

#### The production and retention of Town work products.

All Town-related electronic work products shall be stored on a Town network or storage device authorized by the Town Manager or Town Attorney. Work product belongs to the Town and may be worked on off-site, but the master file will reside on the Town network or storage devices described above.

#### **E-MAIL AND INTERNET USAGE**

IT reserves the right to inspect e-mail, computer files, downloaded files/programs, internet history, and other electronic files at any time on Town owned equipment.

#### Acceptable Uses of E-Mail.

1. Any use of the electronic e-mail systems to conduct Town of Payson business.
2. Occasional personal (but not private or confidential) use of e-mail as authorized by the immediate supervisor, providing that it does not violate any other Town of Payson guidelines.
3. Using personal e-mail to conduct Town of Payson business is discouraged but not prohibited.

#### Prohibited Uses of E-Mail.

1. Solicitations that are not part of an official Town of Payson sanctioned event.
2. Unsolicited (i.e., mass mailing to groups of employees) advertising of available services or personal items "for sale" or "for free".
3. Unsolicited (i.e., mass mailing to groups of employees) announcements of parties, group outings, private events, or other activities without prior approval of the employee's supervisor.
4. Sending or forwarding chain mail or other mass mailings that are not of a business nature.
5. Sending messages that are of a commercial, religious, or political nature.
6. Using Town e-mail services to transmit messages or attachments related to outside employment activities.
7. Sending messages that promote a personal view or opinion of a societal issue or cause.
8. Sending messages or images that are sexually explicit or discriminatory based on race, national origin, gender, sexual orientation, age, disability, religion, or political beliefs.
9. Sending messages or images that are harassing or offensive to others as defined by the Town of Payson Personnel Policy Manual.
10. Use by other than employees, official volunteers, or agency contracted employees.
11. Knowingly transmitting viruses, "Spam" mail, or any other unsolicited mail.
12. Sending e-mail without clearly identifying the name, organization and job title somewhere in the body of the original e-mail.
13. Sending confidential information without authorization.

#### E-Mail Privacy.

1. By its nature, electronic mail is not private and has the potential to be purposely or accidentally read by others.
2. The IT staff backs up information on a regular basis, including the e-mail databases. The e-mail within these databases can be retrieved and viewed even though it has been deleted from your active file.

3. Others can inspect electronic mail when allowed by law. The media has been known to request e-mails.
4. The purchase or use of encryption software is not allowed without the knowledge of IT staff.

#### E-Mail Ethics.

1. Write a meaningful subject line. Don't expect your e-mail to be read and replied to promptly if the recipient can't understand the subject of the e-mail without first reading all or parts of the e-mail.
2. Be thoughtful in your use of e-mail attachments. Use attachments only when necessary to convey your message. If only a small part of the attachment is relevant to your message, consider copying and pasting the relevant text instead of sending the entire attachment as long as the context of the attachment remains.
3. Keep your e-mail as concise and succinct as possible. A good rule of thumb is that your e-mail is probably too long if it exceeds one display screen. Consider using the phone, talking in person, or sending a memo instead of sending a "long" e-mail.
4. Always use the spell check function before sending your e-mail.
5. Check your inbox frequently and reply promptly. If you are out of the office for more than a day, you should utilize the "Out of Office" feature to notify people of your absence.
6. Do not send e-mail that you would not wish to be read by other than the recipient. Privacy cannot be assumed nor assured.
7. Be polite and professional in your e-mail communications. Refrain from personal attacks, abusive or threatening language, and never hit the "send" button when you are angry or upset. If you are angry or upset, create the e-mail as a draft and revisit it later to make sure that you really do want to send the message. Remember, once you press the send button the message is gone and you can never take it back.
8. Do not use e-mail to spread professional or personal rumors or comment on the speculation of others.
9. Be cautious with your use of humor and sarcasm as it can easily be misunderstood in e-mail communications.
10. Use the "Reply to All" function only if there is a good reason why all of the recipients of the original message need to see your reply. "Reply All" should never be used by a Council member if other Council members are included in the reply addresses.
11. Target your e-mail to the people who need to read it. Only send e-mail to the "everyone" group if there is a good reason why every employee needs to read your message.
12. Use the "Return Receipt" feature with caution. Some recipients view the use of this feature as a sign of distrust.
13. Use good judgment when subscribing to mailing lists. Learn how to "unsubscribe" to these lists and do not subscribe anyone else to a list.

#### E-mail as a Public Record.

The contents of almost all electronic mail messages are "public records" under Arizona law and are subject to the retention rules and public disclosure requirements of State statutes.

#### Employee Responsibilities.

Employees who transmit e-mail shall determine whether to preserve or delete the e-mail communication as follows:

1. If the content of the e-mail and/or attachment is a public record (and almost all e-mails are), the e-mail and associated attachments shall be printed or preserved in the appropriate file, in permanent paper format or preserved, unedited, in the e-mail system without printing. To determine if a particular e-mail is a public record which is confidential, assistance should be sought from the Legal Department on an individual case basis.
2. If the employee has chosen to retain a public record e-mail within the e-mail system without printing a copy, the backup procedures conducted by IT staff must be considered. Specifically, e-mail backed up to tape and subsequently deleted will be retained on backup media for no more than 28 days after deletion. It is the responsibility of the staff member to ensure that these records are retained in hardcopy format for more than 28 days if required by the State statutes.
3. If the content of the e-mail or attachment is not a public record, an employee may delete the e-mail

and/or attachment from the e-mail system whether or not it has been saved on another storage medium. Remember, however, that very few, if any, e-mails are not public records and, therefore, it is preferable that all e-mail is preserved.

4. If in doubt as to what is or is not considered a public record, or whether it is appropriate to retain a non-public record e-mail in any event (e.g., because of pending litigation), confer with the Legal Department.

#### Elected Officials E-Mail Communications.

Elected officials are encouraged to use the Town e-mail system and their external Town e-mail accounts when conducting their official duties. Only the Town e-mail addresses of Mayor and Council will appear on the Town's web site.

Each elected official will be provided with a Town owned notebook computer and printer for his/her home in order access the Town e-mail and perform job related duties. They may also utilize these notebook computers to access the Town external e-mail system for conducting official Town business while traveling.

E-mail communications among Council members and among Council members and the public concerning Town business or Town related issues are normally considered public records. As such:

In order to preserve the communication, copies of messages sent and received by Council members will be forwarded to a mail box accessible by the Town Clerk. The Town Clerk will preserve the communication per record retention rules and make it available for public inspection.

Mayor and Council are encouraged not to communicate with a quorum of Council members about Council business through e-mail. More specifically:

E-mail cannot be used as a means of discussion, deliberation, or taking legal action by a quorum of members of the Town Council on matters that may foreseeably come before the Council for action. The exchanging of facts or opinions among a quorum of the Council on matters that may foreseeably require Council action may constitute "deliberation".

Examples of other potential violations include:

- A Council member sending communications regarding a potential action item to less than a quorum of members, but also including the opinions of other Council members that would constitute a quorum.
- B E-mail discussions related to a potential action item among less than quorum that are forwarded to a quorum.
- C Splintering the quorum by intentionally having separate and serial e-mail discussions among a quorum of Council members on a potential action item.
- D A one-way communication by any one Council member which proposes an action and is made to three or more other Council members.

Examples of permissible communications would include:

- A Staff member or the public sending e-mail to a quorum of Council members and there are no further e-mails on the topic amongst a quorum of Council members.
- B A staff member sending e-mail to a quorum of Council members indicating that a specific item will or should be placed on a future agenda for action.
- C Council member copying a quorum of Council members on a request to staff for specific information, providing that no Council members reply to a quorum of Council members.
- D Council member e-mailing an article, report, or other factual information to a quorum of Council members with a request to include the information in the Council's agenda packet. However, a quorum of Council members may not discuss this factual information prior to the public meeting.

#### Internet (World Wide Web) Access – Overview.

The following guidelines will be followed when using internet access provided by the Town of Payson:

1. Generally the internet is an unsecured network. All information sent over the internet should be considered public information and should be treated as such.

2. Use of the internet service should be driven by the desire to enable the Town of Payson's employees and elected officials to better serve their internal and external customers.

Employees may use the Internet by only using the Microsoft network ID(s) and password(s) provided to them by the IT staff. Employees should not give their security information to other employees and should not use the ID(s) or password(s) that have been granted to another employee. Employees may authorize another employee to read and handle e-mail and calendar scheduling on their behalf via the MS Outlook Meeting configuration settings.

#### Acceptable Internet (Web) Browsing Uses.

Use for Town of Payson business such as research, training, educational, communications, or other activities related to an employee's job responsibilities.

Personal use as authorized by supervisor, department head, or equivalent. This personal use includes browsing to appropriate web sites, accessing personal e-mail accounts or services, and accessing personal financial accounts.

Use of a personal credit card to make personal purchases as authorized by the supervisor, department head, or equivalent.

Use of a Town of Payson procurement card (ProCard) to purchase goods over the Internet is subject to all previously established procurement rules and guidelines. Employees may use a ProCard to purchase goods only by use of a Secure Socket Layer transaction (SSL). SSL transactions are indicated in a window displayed on the screen and a picture of a key or padlock at the bottom of the browser window.

All users of the Internet shall practice the proper etiquette when communicating electronically with others. Employees are representing the Town of Payson, much like they would be when attending meetings, seminars, or speaking on the phone when conducting Town of Payson business.

#### Unacceptable Internet (Web) Browsing Uses.

Some examples of inappropriate use include, but are not limited to, the following:

1. Participation in chat rooms not specifically related to Town of Payson business.
2. Knowingly accessing web sites or purchasing goods electronically that are pornographic and/or sexually explicit in nature.
3. Using a personal credit card to purchase items without prior approval of supervisor, department head, or equivalent.
4. Signing on or letting other employees, family members, consultants, or anybody else use their Internet capabilities.
5. Conducting any illegal activities.
6. Personal use that interferes with another employee's ability to use that same computer for Town of Payson business.
7. Conducting activities related to secondary employment.
8. Downloading of any software (including application programs, drivers, patches, image files, etc.) from the Internet is not permitted without the knowledge and consent of IT staff.

#### Monitoring of Internet (Web) Browsing.

Web browsing activities are logged and available for inspection. Logging includes web sites visited, key words used while utilizing search engines, and images/pictures that were downloaded to the computer (either intentionally by the employee or by visiting a web page that copies images temporarily to the computer hard drive behind the scenes). Since logging is captured by user ID, computer location, and computer name, it is critical that computers are not left unattended for extended periods of time and that network passwords are not revealed to another employee.

The Town of Payson Firewall is configured to block employee access to web sites that are deemed unacceptable by policy. Occasionally, however certain inappropriate web sites can be accessed either accidentally or intentionally. Although access is not blocked in these cases, it is logged. If you accidentally access a site that you think might be unacceptable, notify your supervisor who can then contact IT staff to inform them of the incident so that it can be logged.

Detailed internet use reports can be made available to department directors via a written request to IT.

Internet use reports may be released to the public through the Town of Payson Clerk's office as part of a public records request.

#### Hardware and Software Services.

The purchase of computers, accessories, hardware add-ons, computer software, and related IT consulting services shall be centralized in order to ensure their compatibility and proper integration with current and future hardware and software systems. It is the responsibility of IT to ensure the integration and compatibility of all software and hardware throughout the organization. This guideline will establish the parameters of the purchase of computer equipment, software, and related IT consulting services for and by employees.

Technology that is intended to meet the specialized needs of a specific department or division and/or not physically connected to the "Town" network may be exempt from this guideline. It is the requesting department's responsibility to contact IT staff to determine the applicability of this guideline to those "specialized" systems.

#### Procurement Rules.

Computer devices, software, and technology consulting/contractual services cannot be purchased without the prior knowledge and approval of the IT staff. This ensures compatibility with current and future systems as well as add-on equipment.

Computer devices and desktop software will be purchased administratively through the IT department. If purchases are made without prior approval or the subsequently purchased item does not meet the standard, the IT staff reserves the right to return the merchandise or assign the equipment to another department at its discretion.

Consulting or contractual services related to IT must not be acquired or conducted without the prior knowledge and consent of the IT staff. The requesting departments will jointly evaluate the need for outside consulting services and will work together in selecting the consultant should these services be deemed necessary.