

*Town  
of  
Leverett*

*Personnel Policies*

*January 2016*

**TOWN OF LEVERETT**

**PERSONNEL POLICIES, JANUARY 2016**

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☞ Sections that do not apply to employees who work less than twenty (20) hours per week.

## **1. INTRODUCTION AND APPLICABILITY**

The Town of Leverett Personnel Policies were accepted by the Personnel Board on January 26, 2016 in accordance with Chapter 30, Personnel, of the Code of The Town of Leverett and the Personnel Bylaw, and shall take effect at that time. All Town departments, boards and commissions, and their respective positions shall be subject to the provisions of these policies. To the extent the provisions of these policies conflict with the provisions of any individual personal employment agreement authorized by law, any statutory provisions, or the provision of any collective bargaining agreement, the terms of the individual personal employment agreement authorized by law, the statutory provisions, or the collective bargaining agreement, as the case may be, shall prevail.

To the extent that a Town department, board or commission is subject to the provisions of a specific state statute that provides such department, board or commission with specific authority to set salaries or other terms and conditions of employment of employees within the jurisdiction of such department, board or commission, the state statute shall prevail over the provisions of these policies; provided; however, that such state statute and these policies shall both be subject to the provisions of Massachusetts General Laws, Chapter 150E, collective bargaining.

Employees for the Town of Leverett are at will employees. These policies are presented as a matter of information only and are not conditions of employment. The Town reserves the right to modify, revoke, suspend, terminate, or change any or all such plans, policies, or procedures, in whole or in part, at any time. The language of these policies is not intended to create, nor is it to be construed to constitute, a contract between the Town and any or all of its employees.

One of the purposes of these policies is to provide a guideline for the Town's compliance with the applicable State and Federal laws or regulations. Should the referenced laws or regulations change in a manner inconsistent with the policy stated by the Town of Leverett, the laws or regulations shall prevail if mandatory.

Annually, employees will be given copies of the Discriminatory Harassment and Sexual Harassment Policy, Conflict of Interest, Use of Town Property/Employees, and Equal Opportunity/Non-Discriminatory policies.

## **2. DEFINITIONS**

Introduction: The following words and phrases shall have the following meanings unless a different construction is clearly required by the context or by the Laws of the Commonwealth:

**BENEFITED POSITION** – Employment of twenty (20) hours or more per week. Individuals who hold a benefited position are eligible for benefits prorated to their weekly hours based on a forty (40) hour work week as described in Section 5, Town-Offered Benefit Package and Section 6, Mandated Benefits.

**BOARD** – The Personnel Board, as defined in §30-4 of the Code of the Town of Leverett.

**CASUAL SERVICE** – Personnel service rendered by an employee in a position which service does not constitute continuous employment. This service is rendered occasionally and without regularity according to the demands therefore. Individuals who provide casual service to the Town are not provided benefits and may be paid at a different compensation rate than employees.

COMPENSATION RANGE – The dollar difference between minimum and maximum rates of pay.

COMPENSATION RATE – A sum of money designated as compensation on an hourly, daily, weekly, monthly, annual or other basis.

**COMPENSATORY TIME – Time earned for hours worked which are in excess of the normal hours required for the proper functioning of the position. Unless an employment contract specifies differently, Leverett does not accommodate Compensatory Time for employees.**

CONTINUOUS EMPLOYMENT – Employment in a long term position for an indeterminate period uninterrupted except for vacation leave, sick leave, or other authorized leave of absence.

DEPARTMENT – Any department, board, committee, commission or other agency of the Town subject to these policies.

DEPARTMENT HEAD – The individual within a department, board, committee or commission with the authority to hire or recommend individuals to the Selectboard for hiring and who supervises the other employees of the department or the appointing authority for that board, committee or commission.

EMPLOYEE – A person who receives compensation from the Town for services rendered or who serves as a volunteer for the Town, other than those excluded in the Introduction, Section 1.

EXECUTIVE ADMINISTRATOR – The appointed individual who provides aid and guidance to the Selectboard and town departments and committees to facilitate the efficient operation of town business, also referred to as the Town Administrator or Administrator.

INTERMITTENT SERVICE – Personnel service rendered by an employee in a position which service, although constituting continuous employment, is not rendered during prescribed working hours, daily, weekly or annually, but is rendered according to the demands for such service. Individuals who provide intermittent service to the Town are not provided benefits and may be paid at a different compensation rate than employees.

REGULAR EMPLOYEE – An employee retained on a continuing basis in the Town service which has required or which is likely to require the services of an incumbent without interruption for a period of more than six (6) calendar months, either on a full-time or part-time basis and has successfully completed the introductory period.

POSITION – An office or post of employment in the Town service with defined duties and responsibilities.

INTRODUCTORY EMPLOYEE – An employee filling a regular position who has been employed less than six (6) months.

TEMPORARY EMPLOYEE – An employee retained in the Town service which requires or which is likely to require the service of an individual for a period not to exceed six (6) continuous calendar months. The six month period may be extended by the Selectboard for up to another six months

TOWN – The Town of Leverett.

WORK WEEK – The period of time, Sunday to Saturday, utilized to determine overtime hours and other benefits for hourly employees.

### 3. POLICIES

#### 3.1 EQUAL OPPORTUNITY/NON-DISCRIMINATORY POLICY

The Town of Leverett recognizes the right of an individual to work and to advance on the basis of performance, ability, and potential without regard to race, gender, color, gender identity, disability, religion, national origin, national ancestry, sexual orientation, genetics, military background, age or any other protected class under the law. The Town resolves to take necessary measures to ensure equal opportunity in the areas of hiring, evaluation, promotion, demotion or transfer, recruitment, layoff or termination, rate of compensation, in-service or apprenticeship training programs and all terms and conditions of employment.

##### Procedure for Complaints

See Discrimination Complaints Reporting and Investigating Procedure, Section 3.5.

#### 3.2 STANDARDS OF CONDUCT

The Employees of the Town of Leverett shall at all times be required to conduct themselves in a manner consistent with appropriate professional standards and in a way that will reflect favorably on the Town of Leverett.

##### Conduct

As a Town of Leverett employee, the employee is expected to fulfill the responsibilities of his/her position in a manner that is consistent with the expectations of the employee's supervisor and the needs of the Town of Leverett. The employee is expected to conduct his/herself in a professional manner in all aspects of work, formal and informal, including personal attire and presentation.

All employees of the Town of Leverett are expected to act at all times in accordance with the standards, policies, and rules of the Town of Leverett and to safeguard the Town of Leverett's reputation and resources. These expectations and standards of behavior extend to the use of Town of Leverett's facilities, equipment, supplies, and technical resources.

The following are examples of conduct that may result in disciplinary action on the part of the Town of Leverett, up to and including termination:

- any breach of conduct of any of the policies contained in this policies book or any other statement of Town of Leverett policy
- behavior inconsistent with the standards and expectations of the Town of Leverett
- unethical, immoral, deceitful, or illegal conduct, whether or not the results of the behavior benefit the employee or employer
- behavior that infringes on the well-being of others
- any other conduct or failure to perform that does not meet the expectations for employees of the Town of Leverett

Be aware that the Town of Leverett may discipline, suspend, or terminate an employee for criminal, felonious or other serious acts that occur off Town of Leverett premises or outside working hours.

### 3.3 DISCRIMINATORY HARASSMENT AND SEXUAL HARASSMENT POLICY

#### Introduction

It is the goal of the Town of Leverett to promote a workplace that is positive, productive and respectful of residents, employees, vendors, volunteers, and board and committee members. A workplace that is free of discriminatory harassment (“harassment”) of any type, including sexual harassment and bullying, is required. Discriminatory harassment consists of unwelcome conduct, whether verbal or physical, that is based on a characteristic protected by law, such as race, gender, color, gender identity, disability, religion, national origin, national ancestry, sexual orientation, genetics, military background, age or any other protected class under the law. The Town of Leverett prohibits harassing conduct that affects employment conditions, that interferes unreasonably with an individual’s performance, or that creates an intimidating, hostile, or offensive work environment.

Harassment of employees occurring in the workplace, in connection with work-related travel, and/or work-sponsored events is prohibited. Further, any retaliation against an individual who has complained about harassment or retaliation against individuals for cooperating with an investigation of a harassment complaint is similarly unlawful and is prohibited.

Because the Town of Leverett takes allegations of harassment seriously, we will respond promptly to complaints of harassment according to the town’s Discrimination Complaints Reporting and Investigating Procedure, Section 3.5. Where it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of harassment.

#### Definitions

“Harassment” means unwelcome conduct, whether verbal or physical, that is based on a characteristic protected by law. Harassment includes, but is not limited to:

1. Display or circulation of written materials or pictures that are degrading to a person or group as previously described.
2. Verbal abuse, slurs, derogatory comments, or insults about, directed at, or made in the presence of an individual or group as previously described.

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

The definition of sexual harassment is broad. In addition to the above examples, other unwelcome sexually oriented conduct, whether intended or not, that has the effect of creating a work environment that is hostile, offensive, intimidating or humiliating to either male or female workers may also constitute sexual harassment.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances – whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences; and,
- Discussion of one's sexual activities.

“Bullying,” means verbal assaults or efforts by others in the workplace to unfairly dominate an employee, and includes misconduct that effectively prevents the targeted person from accomplishing his or her work. The definition includes such behaviors as spreading rumors or sabotaging another employee's work.

“Cyber-bullying” is bullying through the use of technology or any electronic communication, which shall include, but not be limited to, any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electronic mail, internet communications, instant messages, or facsimile communications. Cyber-bullying shall also include (i) the creation of a web page or blog in which the creator assumes the identity of another person or (ii) the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions enumerated in the definition of bullying. Cyber-bullying shall also include the distribution by electronic means of a communication to more than one person or posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions enumerated in the definition of bullying.

All employees should take special note that, as stated above, retaliation against an individual who has complained about any form of harassment, including sexual harassment and bullying, and retaliation against individuals for cooperating with an investigation of a harassment complaint is unlawful and is prohibited.



### Employee Responsibilities

Each Employee is personally responsible for:

- ensuring that his/her conduct does not harass any other employee or person with whom the employee comes in contact on the job, such as an outside vendor;
- cooperating in any investigation of alleged harassment by providing any information he/she possesses concerning the matter being investigated;
- actively participating in efforts to prevent and eliminate harassment and to maintain a working environment free from such discrimination;
- ensuring that an employee who files a harassment claim or cooperates in an investigation may do so without fear of retaliation or reprisal.

The Town of Leverett's Sexual Harassment Compliance Officer and Discrimination Harassment Officer is the Executive Administrator who can be reached in the Town Hall, at 413-548-9699, and at PO Box 300, Leverett, MA 01054.

### Procedure for Complaints

All employees, Department Heads, Administrative Authorities, volunteers, and board and committee members of the Town of Leverett share responsibility for avoiding, discouraging and reporting any form of discriminatory harassment. In addition, residents, visitors, applicants, vendors, contractors, their agents and employees, or other third parties who believe they have been subjected to discriminatory harassment may also file a complaint with the town using the procedures described in Section 3.5. Furthermore, employees may also file a complaint if they have been subjected to harassment from residents, visitors, applicants, vendors, contractors, their agents and employees, or any other third parties in the workplace, while performing work-related duties, or during other work-related activities.

See Discrimination Complaints Reporting and Investigating Procedure, Section 3.5.

### Violation of Policy

Any employee determined to have violated this policy will be subject to appropriate discipline up to and including termination.

## 3.4 AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of physical or mental handicap. The Town of Leverett will not discriminate against employees, job applicants, or recipients of Town services related to such disabilities. The Town will comply with the legal requirements of the Americans with Disabilities Act and MGL Chapter 151B.

The Town of Leverett's ADA Coordinator is the Executive Administrator who can be reached in the Town Hall, at 413-548-9699, and at PO Box 300, Leverett, MA 01054. Requests for accommodations should be made to the Executive Administrator.

### Procedure for Complaints

See Discrimination Complaints Reporting and Investigating Procedure, Section 3.5.

### 3.5 AMERICANS WITH DISABILITY ACT GRIEVANCE AND DISCRIMINATION COMPLAINTS REPORTING AND INVESTIGATING PROCEDURE

If any Town employee believes that he or she has been subjected to harassment or discriminated against based on race, gender, color, gender identity, disability, religion, national origin, national ancestry, sexual orientation, genetics, military background, age or any other protected class under the law in employment practices in the Town of Leverett, that employee has the right to file a complaint. The complaint may be made orally or in writing by following the reporting procedure below. Once a complaint is received or heard by any Department Head, the Town is obligated to investigate the situation. Investigations shall follow the investigatory procedure below.

#### Reporting Procedure

If any employee believes that he or she has been subject to sexual harassment, harassment of any kind, bullying, or other discrimination, the employee should initiate a complaint as soon as possible to the Executive Administrator. The employee should file the complaint promptly following any incident of alleged harassment. The employee should be aware that the longer the period of time between the event giving rise to the complaint and the filing, the more difficult it will be to reconstruct what occurred. The Executive Administrator will document in writing the complaint received and request the complainant to either provide a written statement documenting the details of the complaint or to sign the document created, neither of which the employee is required to do.

If the complaint was made to the Department Head, the Department Head shall inform the Executive Administrator of the complaint within one business day of receipt.

Complaints from residents or vendors should be reported to the Executive Administrator.

Upon receipt of a complaint, the Executive Administrator will conduct an initial inquiry and, if deemed necessary, convene an Investigatory Committee composed of the Executive Administrator, the Chair of the Personnel Board or his/her designee and one other Personnel Board member, as chosen by the Chair.

In the absence of the Executive Administrator or if the Executive Administrator is a party to the complaint, the employee or the Department Head shall report the complaint directly to the Chair of the Personnel Board or his/her designee. The Chair or designee will contact a second Personnel Board member to convene an Investigatory Committee.

If the Chair of the Personnel Board is a party to the complaint, the Executive Administrator will contact two other members of the Personnel Board to convene an Investigatory Committee.

#### Investigatory Procedure

The investigation shall begin within two (2) business days after the complaint has been received by either the Executive Administrator or a member of the Personnel Board.

As part of its investigation, the Committee will take these steps at a minimum:

1. interview the complainant and inform the complainant of the investigation process, including that the accused will be informed of the complaint;
2. inform the accused of the complaint and interview the accused;
3. interview any witnesses to the situation that have been identified;

4. inform the accused and witnesses that retaliation is against the law.

This process will be confidential to the extent possible with an effective investigation. Additional interviews may be held with any of the parties if needed.

The preliminary investigation shall be completed no later than five (5) business days from its initiation unless legally mandated steps require more time.

Upon completion of their investigation, the Investigatory Committee will report their findings in accordance with the Open Meeting Law.

The complainant and the accused will be notified of the findings from the investigation except for a personnel action taken as a result of the investigation, which may be confidential.

Notwithstanding any provisions of this policy, the Town reserves the right to investigate and take action on its own initiative in response to behavior and conduct which may constitute harassment or otherwise be inappropriate, regardless of whether or not an actual complaint has been filed.

#### Contact Information

The Sexual Harassment Compliance Officer and ADA Coordinator is the Executive Administrator who can be reached in the Town Hall, at 413-548-9699, and at PO Box 300 Leverett, MA 01054.

Contact information for the Chair of the Personnel Board can be obtained from the Town Clerk at the Town Hall (413-548-9150), other employees at Town Hall or the Town Report.

#### State and Federal Remedies

In addition to the above, if the employee believes he/she has been subjected to discriminatory harassment of any type, the employee may file a formal complaint with either or both of the government agencies set forth below. Using the Town's complaint process does not prohibit the employee from filing a complaint with these agencies. Each of the agencies requires that claims be filed within 300 days from the alleged incident or when the complainant became aware of the incident.

#### **The United States Equal Employment Opportunity Commission (EEOC)**

1 Congress Street, 10<sup>th</sup> Floor  
Boston, MA 02114  
(617) 565-3200

#### **The Massachusetts Commission Against Discrimination (MCAD)**

Boston Office:  
One Ashburton Place,  
Rm. 601  
Boston, MA 02108  
(617) 994-6000

Springfield Office:  
424 Dwight Street,  
Rm. 220  
Springfield, MA 01103  
(413) 739-2145  
or 413-739-3330

Worcester Office  
(open Wednesdays only)  
455 Main Street, Rm. 101  
Worcester, MA 01608  
508-799-8010  
or 413-799-8011

### 3.6 WHISTLEBLOWER'S POLICY

The Town will follow Massachusetts General Laws, Chapter 149, Section 185, known as the Massachusetts Whistleblower Protection Act, 1992, (the Act) and shall post copies of the Act where employees can have access to them. For the purposes of Section (c) (1) of the Act, written notifications of violations of a law, rule or regulation promulgated pursuant to law shall be provided to the Department Head. Section (c) (2) of the Act outlines the circumstances when notification to the Department Head is not required.

### 3.7 CONFIDENTIALITY

Town employees may have access to sensitive personal or otherwise confidential material. This information shall be held in strict confidence and shall not be discussed outside of the workplace. Violation of confidentiality is a case for discipline up to and including termination.

### 3.8 USE OF TOWN PROPERTY/EMPLOYEES

Town employees shall properly take care of and account for property of the Town within their control and shall not use such property for personal tasks or gain. Also, Town personnel may not be used by Department Heads, Board or Committee members, or others for personal tasks during work hours, or at any time, as a condition of employment. Any violation of this policy may result in disciplinary action up to and including immediate termination for the employee and for the Town official who directed or approved such personal tasks.

The use of electronic devices such as cell phones, either personal or supplied by the town, while driving a town-owned vehicle or in private vehicles while driving on town business, is prohibited. Communications between emergency personnel when required for response operations are exempt from this paragraph.

### 3.9 TECHNOLOGY POLICY

This technology policy applies to every employee and board member (elected or appointed) who is provided access to the Town's computers or other electronic devices. Allowing another individual to access email or the Internet on an employee's Town-owned computer or Internet connection is considered to be use by that employee.

In addition, Board and Committee members who utilize their home computers for Town-related email communications should be aware of, and are subject to, this email policy.

While the Town of Leverett will not lightly or arbitrarily exercise the right to inspect, the Town may, through its Selectboard, reserve the right, for legitimate institutional reasons, to examine without notification, the email correspondence, computer files and/or other material stored on or generated by the Town's voice and data network and/or on Town-owned computer resources of all Town of Leverett personnel.

#### Internet and Computer Use

In order to provide these tools to its employees, the Town invests in computers, Internet connections and software. This equipment and software are the property of the Town. The Town reserves the right to monitor, review and retrieve any information stored on or transmitted

with Town equipment. Employees should remember that documents and programs stored on Town equipment are public and are the property of the Town of Leverett.

Employees are responsible for respecting and adhering to local, state, federal and international laws regarding copyrighting and intellectual property. The copying of copyrighted materials, such as third-party software, without the express written permission of the owner or the proper license is prohibited. Any attempt to break those laws may result in litigation against the offender by the proper authorities and where appropriate, disciplinary action. If such an event should occur, the Town will fully comply with the authorities to provide any information necessary for the litigation process.

Use of the Town's computer or Internet connection for non-government business purposes, to solicit or proselytize others for commercial ventures, religious or political causes or outside organizations, or for personal gain is prohibited.

Any personal use of the Town's computer or Internet connection that interferes with job performance is prohibited.

Any unauthorized, deliberate action, which damages or disrupts a computing system, alters its normal performance, or causes it to malfunction, is a violation of this policy, regardless of system location or time duration, and may be cause for disciplinary action.

Duplication or installation of unauthorized software is prohibited. Software that is not purchased/licensed by the Town is considered unauthorized.

Intentional attempts to "crash" network systems or programs is prohibited.

The willful introduction of computer "viruses" or other disruptive/destructive programs into the Town's network or into external networks is prohibited.

At no time may employees access inappropriate web sites. Any site not related to job duties may be considered inappropriate, such as those hosting pornography, obscene materials or gambling enterprises.

The use of any element of the Town's computer or other electronic system, including Internet access and email, for the receipt or transmission of information disparaging to others based on race, gender, color, gender identity, disability, religion, national origin, national ancestry, sexual orientation, genetics, military background, age or any other protected class under the law is not permitted under any circumstances.

The Town reserves the right to monitor and make public the history of web sites visited and Internet access and use from Town-owned computers in order to ensure compliance.

#### Email

As with all of the Town's assets, Town-provided e-mail communication is intended to be used for work-related purposes and in ways consistent with the Town's overall policies. Board and Committee members who utilize their home computers to communicate via email regarding Town business should also be aware of this policy.

Email may not be used in any way that is disruptive to the operation of the Town, offensive to others, or that attempts to circumvent the Open Meeting Law.

The use of e-mail for the transmission of information disparaging to others based on race, gender, color, gender identity, disability, religion, national origin, national ancestry, sexual orientation, genetics, military background, age, gender identity or any other protected class under the law, is not permitted under any circumstances.

Likewise, electronic mail is not to be used to solicit or proselytize others for commercial ventures, religious or political causes or outside organizations, or personal gain (including, but not limited to, "chain letters" and/or requests for donations).

The use of broadcast mail (sending the same message to a group of employees) places stress on e-mail systems and has the potential for generating undesirable volumes of junk mail or spam. Therefore, it should be selectively used only for Town-related reasons.

All e-mail transmissions written and sent on Town-owned computers, or those sent by Town board and committee members from home computers if Town business is involved, are considered public documents and should be handled similarly to written letters rather than as phone calls. Hard copies of email communications should be generated and stored so that they could be provided should a public records request be received.

All email communication should be completed in compliance with the Open Meeting Law, Massachusetts General Laws Chapter 30A, sections 18-25. Employees, board and committee members may use email to disseminate information or arrange meetings, but they cannot use email to replace a meeting, deliberate issues, make decisions, poll board members on an issue, or store minutes. Boards and committees must keep a hard copy of their minutes, which should be recorded with the Town Clerk.

In addition, consideration must be given for those board or committee members who do not have email and/or do not utilize it regularly. An email sent does not ensure that it is an email read and that the message has been received by all who may need the information.

#### Social Media

Social media sites or accounts may be set up by a Department Head with prior Selectboard approval. Any requests to establish a social media site shall include a plan for its use and content.

The above policy applies to both personal and town social media accounts. Violating the policy will be subject to discipline, up to and including termination.

#### Electronic Devices

The use of electronic devices, either personal or supplied by the town, while driving a town-owned vehicle or while driving in a private vehicle while on town business, is prohibited. Communications between emergency personnel when required for response operations are exempt from this paragraph.

### 3.10 SMOKING POLICY

Smoking is prohibited in all public buildings and within fifty (50) feet of the entrance of any public building. This policy is strictly enforced.

### 3.11 WORK SCHEDULE

The regular workday for the Town of Leverett employees will be the schedule as posted by the employees' department. Supervisors are to record all absences, tardiness, and early departures and the reason(s) (excluding use of vacation or personal leave). Absences, tardiness, and early departures for unsatisfactory reasons shall be grounds for disciplinary action up to and including termination.

### 3.12 CONFLICT OF INTEREST/FINANCIAL DISCLOSURE

Town employees are required to comply with Chapter 268A of the Massachusetts General Laws which governs conduct as a public official or public employee.

## **4. EMPLOYMENT PRACTICES**

### **4.1 HIRING.**

Subject to the provisions of this policy, if a vacancy occurs or a new position is established, the Department Head shall, subject to the approval of the Selectboard, post the opening. With the exception of those positions filled on an emergency basis, all open positions (part- and full-time) for employment in the Town, shall not be filled until they have been posted for at least seven (7) days on the public bulletin board at the Town Hall. Applications shall be received and interviews conducted as agreed to by the Selectboard and Department Head. All hiring shall be done in accordance with Leverett's Equal Opportunity/Non Discriminatory Policy as outlined in Section 3.1. Prior to being hired, a prospective employee will be given a job description and a copy of the benefit package pertaining to his/her prospective position. The prospective employee will also be told whether the position is full-time, benefited, part-time, regular or temporary, salaried or hourly compensation. Prospective employees may have to complete a medical exam as outlined in Section 4.4 and may have to complete a CORI check and/or a CDL drug test as outlined in Sections 4.5 and 8.3, respectively.

See Personnel Hiring Checklist, Attachment A, for more guidance.

### **4.2 REFERENCE AND BACKGROUND CHECKS**

It is the policy of the Town to check references of potential employees prior to appointment. The Department Head may conduct reference checks on the final candidates they are considering to hire. Reference checking may include CORI (post offer), driving history, calling references and former employers and other background checking as appropriate to the position.

Sample reference check questions are attached to this policy (Attachment B).

### **4.3 OFFER OF EMPLOYMENT**

The Department Head may provide an informal oral offer of employment to ascertain if the prospective employee is still interested. The Department Head shall provide a contingent offer of employment to a prospective employee that contains the rate of pay, hours of work, starting date for employment and other relevant information, including the necessity for a pre-placement statement of medical condition, CORI check, and other pre-placement checks, if so required. If accepted, the Department Head shall refer the prospective employee to the Selectboard for appointment. The Selectboard is the final appointing authority for all town positions. Each new employee shall be directed to consult with the Town Treasurer during the first week of employment to ensure compliance with all legal requirements and facilitate enrollment in health insurance plans and the retirement system, as appropriate.

### **4.4 MEDICAL EXAM.**

Newly hired personnel may be required to submit a preplacement statement of medical condition completed by their physician. For certain positions the Town may require a complete medical examination and/or psychological test to be completed at the Town's expense.



#### 4.5 CORI CHECKS

The Town is certified to request Criminal Offender Record Information (CORI) on certain applicants and employees and will request post-hire, pre-employment CORI for eligible employees.

Once applicant(s) for the following positions have been offered a conditional offer of employment, CORI shall be requested:

- All Library Employees or Volunteers
- All Council on Aging Employees or Volunteers
- Recreation Commission Employees or Volunteers who are running programs or classes where children age eighteen (18) or younger will participate
- All Fire Department employees
- All Emergency Management Team Members and Volunteers
- Any other employee where appropriate

Police Department applicants and employees follow a separate procedure for CORI/DCJIS investigations. CORI/DCJIS investigations will occur minimally at the time of hire and prior to reappointment for all Police Department employees.

Employment in the above positions is contingent on a satisfactory CORI check. If requested, an applicant or employee will be provided with a copy of this policy.

CORI results received for an individual in relation to one position may not be shared if the same individual applies for another position, even if that position is also a CORI certified position.

The person on whom the CORI was received is entitled to a copy of the CORI results and shall be provided with one upon receipt of a signed, dated letter stating that they have received a copy at their request.

CORI investigations on individuals who have been offered one of the above positions shall be requested as a final part of the applicant screening process. The applicant must sign and complete the "CORI Acknowledgement Form" (Attachment C) and provide the appropriate documentation. The signed form(s) are to be given to the Executive Administrator or Town Treasurer for submission to the Department of Criminal Justice Information Services (DCJIS). Failure to authorize a CORI investigation will disqualify the applicant for consideration for the position.

The signed and completed CORI Acknowledgement Form is only valid for one year and must be kept on file for one year. The Town may only conduct a subsequent CORI check within the one year period if the Town provides the applicant with 72 hours written notice.

CORI investigations may periodically be conducted during the course of an employee's employment with the town and should regularly be conducted every three years prior to reappointment. The employee will be notified of this CORI check, be requested to complete a current CORI Acknowledgement Form, and provide the appropriate documentation.

Response to the information request may take up to two (2) weeks to be returned.

In Leverett, the Town Treasurer, Executive Administrator, and Selectboard Members are authorized recipients for CORI. The Town of Leverett will keep a current list of individuals authorized to have access to, or view, CORI. All individuals on this list will review and be familiar with the educational and relevant training materials regarding CORI laws and regulations made available by DCJIS, primarily that the CORI are confidential and the results of the CORI search cannot be disclosed to other individuals.

Upon receipt of a CORI, the authorized recipient shall closely compare the record provided by the DCJIS with the information on the CORI request form (such as name, social security number, date of birth, and any other identifying information provided by the applicant) to ensure that the record relates to the applicant. If the data do not match, the request shall be resubmitted to the DCJIS.

If the authorized recipient reasonably believes that the record belongs to the applicant and is accurate, then he/she shall meet with the Chair of the Selectboard to review the CORI and determine the applicant's suitability for the position.

Unless otherwise provided by law, a criminal record will not automatically disqualify an applicant from employment. Misdemeanors that are over 5 years old and felonies that are over 10 years old are not cause for disqualification. Rather, determinations of suitability based on CORI results will be made consistent with any applicable laws or regulations and according to factors, which may include, but not be limited to the following:

- 1) Relevance of the crime to the position sought;
- 2) The nature of the work to be performed;
- 3) Time since conviction;
- 4) Age of the candidate at the time of the offense;
- 5) Seriousness and specific circumstances of the offense;
- 6) The number of offenses;
- 7) Whether the applicant has any pending charges or outstanding warrants;
- 8) Any relevant evidence of rehabilitation or lack thereof;
- 9) Any other relevant information, including information submitted by the applicant or requested by the hiring authority.

If the town is inclined to make an adverse decision based on the results of the CORI check, the applicant shall be notified of such in a timely manner; be provided with copies of the CORI result with the source of the criminal history if the source is different from the CORI received, the town's CORI policy, and the DCJIS's *Information Concerning the Process in Correcting a Criminal Record*; be advised of the part(s) of the record that make the applicant unsuitable for the position; and be given an opportunity to dispute the decision based on the accuracy of the CORI.

After receipt of this notification if the applicant disputes the decision based on the accuracy of the CORI results and provides additional documentation or corrected information, the Selectboard Chair and the authorized recipient will again meet, review the additional information, and decide if the additional information changes their adverse employment decision. The applicant will be informed of their decision in a timely manner.

CORI reports are confidential and shall be maintained in a separate locked file located in the Town Treasurer's office. CORI reports are not part of an employee's personnel file and will be destroyed after three years of receipt.

The authorized recipient of the CORI shall document all actions taken regarding each CORI search. All CORI obtained from the DCJIS is confidential and can only be disseminated as authorized by law and regulation. The Town shall track, by the name, address and date, any dissemination of CORI outside of the Town, including dissemination at the request of the subject.

#### 4.6 HIRING DOCUMENTATION

On the first day of employment, or as soon as practicable, the employee will meet with the Town Treasurer to complete or receive the following documents:

- a. Employment Eligibility Form (I-9)
- b. M4 state withholding
- c. W-4 or W-4A tax withholding
- d. Franklin County Retirement New Member Enrollment Form
- e. Basic life insurance enrollment form or waiver
- f. Health/dental/long term disability insurance/long term care enrollment forms or waivers
- g. Annuity/deferred compensation enrollment form (optional)
- h. OBRA form (if applicable)
- i. Direct deposit authorization (optional)
- j. Clearance from any Conflict of Interest issues regarding employment
- k. Sexual Harassment policy and Conflict of Interest law summary

All documentation will be maintained with the employee's Application for Employment/resume by the Town Treasurer in a personnel file.

#### 4.7 INTRODUCTORY PERIOD.

The first six (6) months of an employee's continuous service shall constitute his/her introductory period. During this period said employee may be terminated with or without cause. Department Heads should complete a performance review during fifth (5<sup>th</sup>) month of the introductory period. The Department Head may extend an employee's introductory period. This does not apply to temporary employees.

#### 4.8 SALARY SCHEDULE/JOB DESCRIPTIONS

The Personnel Board shall have a plan for the regular review of the compensation of positions other than those under the direction and control of the School Committee. This position review shall be based upon compensation for similar positions in comparable municipalities as obtained through independent surveying, the Franklin Regional Council of Government's annual wage and salary survey and, if available, the Massachusetts Municipal Association's wage and salary survey. The Personnel Board shall recommend adjustments in compensation as necessary to maintain equity with the market area.

A Cost of Living Adjustment (COLA) is recommended for employees on an annual basis. This COLA will not be given separately to those employees receiving a salary adjustment based on market rate, employee longevity, change in job duties and/or performance, but it may be one factor upon which that adjustment is based. The COLA also will not be given to those who have another salary agreement with the Town. COLA and salary adjustment recommendations are dependent upon Selectboard approval and Town meeting appropriation.

As personnel changes in Town dictate, the Personnel Board shall correspondingly update the Salary Schedule.

The Personnel Board shall establish, maintain, and amend, as it deems necessary, written job descriptions for each position. The job description shall describe the essential character of the duties and responsibilities of positions with illustrative examples of work where desirable and shall state the essential qualifications for entrance into positions.

The essential qualifications for all positions shall be prescribed by the Personnel Board and shall be based upon all or some of the following:

1. the essential qualifications recommended by Department Head ;
2. an examination of work content of positions;
3. a study of comparable positions in the service of other municipalities.

#### 4.9 PERFORMANCE EVALUATIONS

A formal performance evaluation for new employees should be completed at the fifth (5<sup>th</sup>) month of employment. Evaluations also may be completed periodically throughout employment, at the discretion of the Personnel Board or the Department Head. The performance evaluation process is intended to foster greater communication between the employee and his/her Department Head and to outline the expectations that the Department Head may have for each employee's individual performance. Performance evaluations will constitute a permanent part of the employee's work record and will be kept in his/her personnel file.

#### 4.10 PERSONNEL FILES

Personnel files are located in the Town Hall and are maintained by the Town Treasurer. Personnel files contain information regarding an individual's employment with the Town. These files are confidential. Employees should notify the Town Treasurer promptly of any changes in status, such as change of name or address, so that personnel files are kept up to date.

The Town Treasurer is the primary custodian of personnel files for Town employees. Any employee wishing to examine the contents of his/her personnel file must submit a written request to the Town Treasurer two (2) working days in advance. An employee is entitled to review the contents of his/her personnel file only in the presence of the custodian.

The custodian shall make one copy of requested material for the employee or his/her counsel. No employee or his/her agent shall be permitted to remove material from a personnel file.

The Selectboard members, Executive Administrator, Department Head, Treasurer, and Personnel Board, or their designees, may access personnel files routinely to carry out their duties. The Town may provide copies of personnel files to Town Counsel, its insurance provider, or other specialized consultants to support its defense in a legal or other special situation.

If a Town employee disagrees with any information contained in his/her file, he/she may submit a written statement explaining his/her position, which shall become part of the permanent record.

Medical records or medical information are not included in personnel files. All medical records or medical information submitted to the Town for Town employees, elected or appointed, will be retained in a separate, secure file which is maintained by the Town Treasurer.

If negative information is placed in a personnel file, the employee must receive written notice within 10 days.

#### 4.11 SEPARATION

Separation of employment is an inevitable part of personnel activity with any employer. Either the Town of Leverett or the employee may initiate the separation of the at-will employment relationship. The following are the most common circumstances under which employment is separated:

1. resignation (voluntarily initiated by employee, and a minimum of 14 days notice is requested)
2. termination (employer initiated)
3. retirement (voluntary by employee)
4. layoff (involuntary employer initiated for non-disciplinary reasons)

The Selectboard has authority to terminate an employee from the employ of the Town. As stated above, all employment at Leverett is "at-will." That means that employees may be terminated from employment with the Town with or without cause, and employees are free to leave the employment of the Town with or without cause.

For any adverse employment action, other than lay off or termination, the employee may follow the Grievance procedure outlined below. Employees who are terminated are eligible to receive vacation pay accrued until the time of termination. Individuals may have the right to continue insurance coverage (COBRA) by paying their own premium for a period not exceeding 18 months as provided by federal law.

#### 4.12 DISCIPLINARY PROCEDURE

It is the responsibility of all employees to observe the rules and regulations necessary for the proper operation of the Town of Leverett. Supervisors are responsible for the proper and efficient discharge of their duties and in observing and complying with these policies.

The Selectboard is responsible overall for disciplinary actions involving the Town of Leverett employees. The reasons for disciplinary action that may be imposed range from conduct or action, which interferes or prevents the Town of Leverett from effectively and efficiently discharging its duties to the public to terminable misconduct. When discipline is necessary, the Town of Leverett has the right to insure that such discipline is fair and consistent. Factors that are generally considered are:

- 1) the seriousness of the offense;
- 2) the circumstances surrounding the incident(s);
- 3) an employee's past record;
- 4) Town of Leverett past practices.

Notwithstanding the fact that Town of Leverett employees are at will, depending on the severity and frequency of the circumstances, the Selectboard may apply the following disciplinary measures:

- Verbal Reprimand
- Written Reprimand
- Disciplinary Probation
- Suspension
- Termination

The Town of Leverett reserves the right to use any or none of the disciplinary measures detailed above at the discretion of the Selectboard.

As a guide and not as an exhaustive list, the actions listed below are not acceptable and will result in disciplinary action up to and including termination:

- Dishonesty
- Unprofessional conduct
- Deliberate abuse or damage to machinery, materials, buildings
- Insubordination
- Excessive absenteeism/tardiness
- Disclosure of Confidential Information
- Absence without leave
- Conviction of a felony
- Misuse or unauthorized use of Town of Leverett property
- Use of, possession of, or being under the influence of alcohol, or unlawful drugs during work hours
- Failure or refusal to carry out work or a training assignment
- Deliberately falsifying information on an employment application, production records, time card, or other record
- Possession of firearms or other explosives
- Unlawful Activity
- Discriminatory or sexual harassment
- Bullying of any type
- Any other conduct found to be unprofessional or unacceptable to the Selectboard

#### 4.13 GRIEVANCE PROCEDURE

If an employee shall feel aggrieved by any provision of disciplinary action other than termination, he/she shall first discuss the matter with his or her Department Head in a mutual effort to clear up any problem or misunderstanding. If, after conference, a satisfactory understanding and solution of the problem has not been reached, then either the Department Head or the employee may file a grievance with the Personnel Board. Grievances must be filed within 21 calendar days of the date of the disciplinary action. The Personnel Board shall hear the parties and make a recommendation to the Selectboard within thirty (30) days of receipt of the grievance. The Personnel Board and Selectboard shall comply with the Open Meeting Law while going through this process. The Personnel Board's recommendation may overturn the original disciplinary action taken. The Selectboard shall review the Personnel Board's recommendation and render its decision within thirty (30) days of receipt of the Personnel Board's recommendation. The Selectboard's decision shall be final.

This procedure shall not take the place of any grievance procedure under a collective bargaining or employment agreement.

#### 4.14 EMPLOYMENT OF MINORS

The Town will comply with all laws of the United States and the Commonwealth of Massachusetts in the area of child labor. Department Heads and Administrative Authorities should pay strict attention to the procedures and requirements outlined by the State and Federal Secretaries of Labor in order to insure compliance with the law and the safety of children who may work for the Town.

All minors must submit an educational certificate (work permit) that they have obtained from their school or Superintendent of Schools

The Town must keep posted in a conspicuous place, in the room where such minors are employed or report to work, a printed notice or schedule stating the number of hours such minors are permitted to work on each day of the week, the total number of scheduled hours for the week, the hours commencing and stopping work, and the hours when the time allowed for meals begins and ends for every day of the week.

#### 4.15 RETURN TO WORK MEDICAL EXAM

If a Return to Work Medical Exam is required of an employee, the following procedure shall be followed:

1. Employee must report the medical event to their supervisor within 48 hours of his/her return home. Employee may expend earned sick/vacation/personal time if available
2. Supervisor must report it to the Executive Administrator within one working day
3. Employee submits a written statement from his/her personal physician stating that the employee is able to return to work and perform all the duties and requirements of the position.
4. Employee is put on medical leave until he/she passes a fitness for duty medical exam at the Town's expense at a facility of the Town's choosing.
5. Employee makes medical exam appointment and attends.
6. When the results of the medical exam are received, either:
  - a) The employee is able to return to work and perform all the duties and requirements of the position and the employee returns to full active duty; or
  - b) The employee is not able to return to work and perform all the duties and requirements of the position. Leave pay and the employee's employment with the Town will terminate as of the date of the medical exam results unless the employee has additional Family and Medical Leave Time available

Where in conflict, employee union or employee contracts will supersede this policy.

#### 4.16 EXIT INTERVIEW AND QUESTIONNAIRE POLICY

It is the policy of the Town of Leverett to offer all employees terminating employment with the town an opportunity to complete an Exit Questionnaire and/or to have an Exit Interview with a member of the Personnel Board. Both should be scheduled and completed during the employee's last week of employment with the town.

- A. The Personnel Board will provide an Exit Interview and Questionnaire to individuals leaving employment with the town.
- B. Completed Exit Interviews and Questionnaires are confidential. They will be reviewed periodically by a member of the Personnel Board for the purposes of identifying patterns or problems. The Personnel Board may consult with Department Heads and/or the Selectboard as appropriate or necessary.
- C. The Executive Administrator shall store completed Interview notes and Questionnaires in a separate file. The record shall not become part of the individual's personnel file.



## 5. TOWN-OFFERED BENEFIT PACKAGE

Introduction: Benefits will accrue for any person working in a Regular position averaging at least twenty (20) hours per week for a period of six (6) continuous calendar months. Any person employed in a combination of Regular positions totaling a minimum of twenty (20) hours per week will be eligible for employee benefits after a period of six (6) months of continuous service\*, not to include any persons considered “call”, “seasonal”, “casual”, or “intermittent” personnel. Benefits listed in this Section will be prorated based on a forty (40) hour per week full-time position. Holidays will be paid as they occur, and will be prorated based on a forty (40) hour per week full-time position. Employees must be on paid status on the normally scheduled day prior to and following a holiday in order to be paid for the holiday.

\*Exceptions to this are health and life insurance, holidays, personal days, and disability which become effective as of the date of hire.

Employees shall not continue to accrue sick, vacation, or personal time, nor will they be paid for holiday time, while being paid by Workers’ Compensation or Police and Fire Accident Leave. Benefits will resume accrual upon return to work.

Employees who move from a non-benefited part-time position to a benefited full-time position begin accrual of benefits when full time employment begins.

 Indicates sections that are not applicable to employees who work less than twenty (20) hours per week.

### 5.1 PAID HOLIDAYS

New Year's Day	Labor Day
President's Day	Columbus Day
Martin Luther King's Birthday	Veteran's Day
Patriot's Day	Thanksgiving
Memorial Day	Christmas
Fourth of July	

Holidays that fall on a Saturday will be observed on the preceding Friday; holidays falling on a Sunday will be observed on the following Monday.

See Overtime, Section 6.1, for Holiday overtime pay rate.

### 5.2 VACATION

2 weeks/80 hours - during the first and second years, accrued monthly, prorated on a forty (40) hour per week position. No vacation time may be used until the completion of six (6) months of continuous employment.

3 weeks/120 hours - third through sixth years, accrued monthly, prorated on a forty (40) hour per week position.

4 weeks/160 hours - seventh through fifteen years, accrued monthly, prorated on a forty (40) hour per week position.

5 weeks/200 hours - sixteenth and subsequent years, accrued monthly, prorated on a forty (40) hour per week position.

Employees may carry over two (2) weeks of vacation time to the next fiscal year. Vacation must be taken at times approved by the Department Head. Years of employment are based on anniversaries from first day of qualifying employment.

At time of separation from employment a Town employee shall be paid for all accrued vacation time but not for accrued sick leave.

### 5.3 LEAVE WITHOUT PAY~~☞~~

At the employee's request and in circumstances when all other options for leave have been exhausted, a Town Department Head may grant from one to five (5) continuous working days as leave without pay. When granting leave without pay, the Department Head will certify that normal and expected work of the department will not be adversely affected by such leave.

Request for leave without pay in excess of five (5) continuous days, or more frequently than two (2) times per year, must be approved by the Selectboard. Leaves in excess of five (5) days are subject to following conditions:

- Employees shall not continue to accrue sick, vacation, or personal time, nor will they be paid for holiday time, while being paid by Workers' Compensation, Police and Fire Accident or any other unpaid leave. Benefits will resume accrual upon return to work.
- Continuation of retirement benefits is determined by state and federal laws and by the Franklin County Retirement Board;
- Employees who do not return to work at the of the end of their approved leave, unless the law provides a different time frame, will lose their position with the Town and the Town will send them written notification of that loss;
- If the employee wishes to request an extension of the approved leave time schedule, then the employee must request an extension to the Selectboard and the Department Head no less than thirty (30) days before the end of the scheduled return to work date. An extension of time requires Selectboard approval;
- Backfilling positions will be made on a case-by-case basis. Employees hired to fill a position vacated by an extended leave shall be given written notice that their position is temporary and dependent upon the return of another employee.

### 5.4 SICK LEAVE~~☞~~

Beginning at hire date, sick time accumulates at the rate of one (1) day per month, prorated according to number of hours worked per week, cumulative to ninety (90) days prorated. Employees may not utilize accumulated sick time until they have been employed by the Town for six (6) continuous calendar months. A physician's certification is required for any absence of five (5) or more days within a two week period.

For an absence of more than five (5) days, the Town may require medical clearance from the appropriate medical provider prior to the employee returning to work.

The Town will not buy back any sick leave remaining when an employee terminates or leaves the employment of the town for any reason.

### 5.5 PERSONAL DAYS~~☞~~

Two (2) days per year prorated to number of hours worked per week. Personal days are provided on the first day of the fiscal year.

During an employee's first year of hire, 2 personal days are provided upon hire if the employee was hired before January 1<sup>st</sup> and 1 personal day is provided upon hire if the employee was hired after January 1<sup>st</sup>. Personal days may be used by an employee during the first six months of employment.

No carry-over of personal days from one fiscal year to the next fiscal year is allowed. Accrued personal days are not paid to employee at separation or termination from employment.

 Indicates sections that are not applicable to employees who work less than twenty (20) hours per week.

## 5.6 BEREAVEMENT DAYS<sup>26</sup>

Three (3) days prorated according to number of hours worked per week for eligible individuals, defined as: spouse, parent, parents-in-law, children, sibling, grandparents, grandparents-in-law, grandchildren, and members of the immediate household.

## 5.7 HEALTH INSURANCE FOR RETIRED EMPLOYEES<sup>26</sup>

Employees have the option of continuing health insurance upon retirement if they have worked for a qualified institution for at least 10 years. The Town contributes 50% toward the cost of health insurance for eligible retired employees only. Retired employees are eligible for health coverage only if they are continuing health coverage in a plan administered by the Trust when they were active employees or if a qualified event takes place under the ERISA guidelines and like coverage has been lost due to no fault of the employee.

At Annual Town Meeting on April 27, 2002, Article 13, Leverett accepted Massachusetts General Laws Chapter 32B, section 18, which requires that all Town employee retirees, their spouses and dependents, who are enrolled in Medicare Part A who choose to enroll in a Medicare supplement plan are required to enroll in the Medicare supplement plan offered by the Town (MGL c.32B, section 18A has replaced section 18 and is consistent with the town meeting vote).

## 5.8 DEFERRED COMPENSATION<sup>26</sup>

A full-time or eligible benefited employee (working twenty (20) hours per week or more) may elect to have part of his/her pay withheld and invested in a pre-tax plan as authorized by Sections 457 or 403(b) of the Internal Revenue Code.

## 5.9 VOLUNTARY OMNIBUS BUDGET RECONCILIATION ACT (OBRA)

A part-time employee (working less than twenty (20) hours per week) may elect to have part of his/her pay withheld and invested in a pre-tax plan as authorized by Sections 457 or 403(b) of the Internal Revenue Code.

## 5.10 SICK BANK

### Purpose

The purpose of this sick bank is to provide additional sick leave to employees who are absent from work for prolonged periods due to personal illness or injury. Participation in or use of the bank is wholly and entirely voluntary. Review and approval of sick bank time requests shall be the duty of the Personnel Board.

The sick bank is expressly intended for use by participants who are suffering from a serious medical condition that requires immediate treatment. The sick bank is not intended to be used for absences due to elective, non-essential treatments or procedures that are scheduled and pre-planned with sufficient time to accrue the needed days. It is the position of the Personnel Board that an individual employee should plan to use his or her own sick days, personal days, and/or vacation days in the case of elective, non-essential, scheduled and/or pre-planned treatments. Sick bank time cannot replace benefits provided or required by a third party provider, such as Worker's Compensation, but can supplement those benefits as regular sick time can.

<sup>26</sup> Indicates sections that are not applicable to employees who work less than twenty (20) hours per week.

#### Establishment

The sick bank shall be established by the voluntary contribution to the bank of sick time or vacation time in accordance with the following terms:

1. Regular employees who work at least twenty (20) hours per week and who are eligible to earn sick or vacation time may make voluntary contributions to the sick bank.
2. Qualified employees may make an initial contribution each fiscal year (on July 1<sup>st</sup> or the first working day thereafter) of as much time as they choose by notifying the Town Treasurer. Should the collective bank time be exhausted at some point during the fiscal year, employees may offer, or may be solicited, to donate additional time at that point.
3. All contributions of sick or vacation hours must be from the earned time standing to the credit of qualified employees and may not be borrowed against anticipated future earnings.
4. An employee may not donate leave time beyond his/her employment separation date.
5. No employee may deplete his or her sick time through contributions to the sick bank. Employees must leave no less than the equivalent of ten (10) working days (of their time) worth of sick time to their personal credit.
6. All contributions are to be considered property of the bank.

#### Access to the Sick Bank

1. All regular employees who have been employed by the Town of Leverett for at least six (6) months, who are eligible to earn sick time, and who work twenty (20) hours or more per week may apply to the sick bank for additional sick time provided that:
  - a) They have or will have, within the next pay period, exhausted all sick and vacation leave, compensatory time, and personal days standing to their credit.
  - b) The employee's absence from work is due to personal illness or injury and the employee is suffering from a serious medical condition that requires immediate treatment. The sick bank is not intended to be used for absences due to elective, non-essential treatments or procedures that are scheduled and pre-planned with sufficient time to accrue the needed days.
2. The application shall be in writing to the Personnel Board, signed by the applicant or by a legally authorized person (if applicant is unable to sign) and dated, and shall contain or be accompanied by, any additional information or documentation as the applicant sees fit or is requested by the Personnel Board.
3. A written application signed by the applicant or by a legally authorized person (if applicant is unable to sign) shall be deemed sufficient authorization for the Personnel Board to view the applicant's personnel records pertaining to sick leave, vacation and personal time, and to conduct sufficient investigation regarding the application, including the reasons for the request including the medical file.
4. The Personnel Board shall review and may approve such a request and may require an employee, who applies to draw from the bank, to provide a medical certificate as to illness. The Personnel Board may re-evaluate each case at one-month intervals, and, in that regard, may require that the employee furnish further medical certification of illness and may set limits on the number of days the employee may use and the time span over which they may be used.

5. The following criteria shall be used by the Personnel Board in determining eligibility and the amount of leave:
  - a) Adequate medical evidence of personal illness or injury that the employee is suffering from a serious medical condition that requires immediate treatment. The sick bank is not intended to be used for absences due to elective, non-essential treatments or procedures that are scheduled and pre-planned with sufficient time to accrue the needed days;
  - b) Prior utilization of all available sick, vacation and personal time;
  - c) Previous attendance record;
  - d) Availability of sick bank time.
6. Any employee who applies for time from the sick bank will be notified of the Board's decision in writing. If use of the sick bank is granted such notification will include the total number of hours approved.
7. Decisions of the Personnel Board regarding eligibility for sick bank time shall not be subject to any grievance, arbitration, appeal process, personnel claims and/or any other claims against the Town, its officials, boards, employees and/or agents.
8. While an employee is being paid from the sick bank, an employee will continue to accrue his or her sick, holiday, vacation and personal time, in accordance with the current manner of accrual, which shall be charged against his or her absence as they accrue in lieu of sick bank time.
9. Any employee who receives sick leave time from the sick bank through the use of any material misrepresentation of facts shall be liable for reimbursement of all salary and benefits expended by the sick bank.
10. Should the sick bank be eliminated, all days accumulated shall be equally divided among those who contributed time in the twelve (12) months previous to the elimination.

Unless otherwise provided for by the public records law or the Personnel Board, the names of contributors to the sick bank may be made available to the recipient, if requested; however, the amount of time donated by any employee will not be divulged and shall not be a public record.

## 6. MANDATED BENEFITS

### 6.1 OVERTIME~~☒~~

Hourly employees receive overtime pay at a rate of one and a half times (1.5) their regular hourly rate for all hours actually worked and paid holidays in excess of 40 hours in a work week. Vacation, sick, and personal time hours shall not be added for purposes of calculating the 40 hours per work overtime threshold.

Hourly employees will receive pay at the rate of double (2) their regular hourly rate for all qualified overtime hours worked on Sundays and holidays.

### 6.2 EMERGENCY CALL BACK~~☒~~

Regular full time Highway Department employees, excluding the Superintendent, shall receive a minimum of three (3) hours of compensation for emergency call back time commencing at the time of arrival to the Highway Garage. If the event requires more time than three hours, than paid time ends at departure from the Highway Garage. Employees will be paid overtime for call back hours if the hours qualify for overtime.

Police contract also has overtime and call back provisions.

### 6.3 JURY DUTY~~☒~~

As required by state statute, as of May 1, 1992, the first three (3) days are paid by the Town, prorated for number of hours worked per week. The Town will also pay up to two (2) additional days of jury duty, for a total of five (5) days per summons to sit. Benefited employees who work fewer than forty (40) hours per week will be paid at their normal proration. Time on jury duty will not be deducted from any calculation of benefits.

All full time Highway Department employees shall request that Jury Duty be postponed to months other than December, January, February and March when receiving notification of Jury Duty service.

### 6.4 MILITARY LEAVE

Under state law MGL Chapter 149, Section 52A for temporary military training, the Town will pay the difference between military pay and municipal pay, if municipal pay is higher, for up to seventeen (17) working days. Such pay will be based on the difference between the hourly wage for both positions and the employee will be paid only for their regular hours with the Town.

Under a federal call to duty, the Town will pay the difference between military pay and municipal pay, if municipal pay is higher, for up to thirty-one (31) calendar days. Such pay will be based on the difference between the hourly wage for both positions and the employee will be paid only for their regular hours with the Town. For up to thirty-one (31) days, all benefits will continue for the employee at same percentage as when regularly employed.

~~☒~~ Indicates sections that are not applicable to employees who work less than twenty (20) hours per week.

Leave beyond thirty-one (31) days will be unpaid and the employee will pay 100% of the health and life insurance premiums if the employee chooses to retain the Town's benefits. Also beyond thirty-one (31) days' leave, long term disability benefits will cease due to lack of income upon which to base them.

Employees should give the Town notice of their leave within forty-eight (48) hours of their receipt of orders and a copy of their orders shall be supplied to the Town.

Employees are subject to all conditions of Section 5.3, Leave Without Pay, for leaves in excess of five (5) days as allowed by state and federal laws regarding military leaves.

## 6.5 FAMILY AND MEDICAL LEAVE, SMALL NECESSITIES LEAVE AND MATERNITY LEAVE

a. Purpose: This policy outlines the basic procedures governing Family and Medical Leaves. Family and Medical Leaves are employee leaves of absence for child care, personal medical care, family medical care and certain other circumstances. This policy also outlines the basic procedures governing brief absences for certain other family purposes, referred to in this policy as Small Necessities Leaves, as well as absences for certain parental leaves authorized under Massachusetts law. This policy is intended to implement the federal Family and Medical Leave Act ("FMLA"), the Massachusetts Parental Leave Act ("MPLA") and the Massachusetts Small Necessities Leave Act ("SNLA"). It is to be interpreted and applied consistent with those laws.

b. Family and Medical Leaves: An employee will be eligible to seek a Family and Medical Leave or a Small Necessities Leave if (1) the employee has worked for the Town for at least 12 months, and (2) the employee has worked for the Town for at least 1,250 hours during the 12 months before the leave. The Town will compute the eligible 12 month period on a fiscal year calendar from July 1<sup>st</sup> to June 30<sup>th</sup>. In certain circumstances, separate periods of employment are aggregated for purposes of the 12 month requirement. Additionally, any time that the employee would have worked for the Town but for his or her National Guard or Reserve obligations is counted toward the 1,250 hour requirement for Family and Medical Leave.

c. Massachusetts Parental Leave: Some employees who are not eligible for a Family and Medical Leave may nevertheless be eligible for a leave of absence for childbirth or adoption pursuant to Massachusetts law, G.L. c. 149, section 105D. Specifically, employees who meet the eligibility criteria specified in the MPLA (i.e., full-time employees who have been employed for at least three months) may be eligible for eight weeks of unpaid leave of absence for the purpose of giving birth or adopting a child. Such an eight-week leave of absence is referred to in this policy as a "Massachusetts Parental Leave." If both parents are employed by the Town, they will receive an aggregate of eight weeks of leave.

d. Types of Family and Medical Leaves: For purposes of this policy, the term "Family and Medical Leave" refers to the leaves of absence under the FMLA. Employees may qualify for any of six types of Family and Medical Leaves. Throughout this policy, the terms "Family and Medical Leave" and "FMLA Leave" refer to any of the following six (6) types of leaves:

(1) Pregnancy Leave: An employee may take a Pregnancy Leave due to incapacity due to pregnancy, prenatal medical care or childbirth.

 Indicates sections that are not applicable to employees who work less than twenty (20) hours per week.

(2) Birth, Adoption and Child Care Leave: An employee may take a Birth, Adoption and Child Care Leave to care for his or her child after birth, or for placement with the employee of a child for adoption or foster care. The leave must be completed within 12 months of the child's birth, adoption or foster care placement.

(3) Family Illness Leave: An employee may take a Family Illness Leave to care for a seriously ill or injured spouse, parent or child. The illness or injury must be a "serious health condition" within the meaning of the FMLA, a term which is defined below. If the leave is for care of a child, the child must either be under age 18 or unable to care for himself or herself due to a mental or physical disability.

(4) Employee Illness Leave: An employee may take an Employee Illness Leave because of a serious health condition that makes the employee unable to perform his or her job.

(5) Qualifying Exigency Leave: An employee may take Qualifying Exigency Leave for certain "qualifying exigencies" arising out of the fact that the employee's spouse, child of any age or parent is on active duty (or has been notified of an impending call to active duty) in support of certain types of military operations, known as "contingency operations." The family member must be a member of the National Guard or one of the military's Reserve units or a retired member of the Regular Armed Forces or the Reserves. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, attending post-deployment reintegration briefings and any other circumstance that the Town and the employee agree should be a qualifying exigency and as to which they agree about the timing of the leave for that event.

(6) Military Caregiver Leave: An employee may take Military Caregiver Leave to care for a spouse, child of any age, parent or next of kin who is a current member of the Armed Forces (including a member of the National Guard or the Reserves) and incurs a serious illness or injury in the line of duty or active duty that may render the service member medically unable to perform his or her duties, if the illness or injury is one for which the service member (1) is undergoing medical treatment, recuperation or therapy, (2) is in outpatient status, or (3) is on the temporary disability retired list. If Military Caregiver Leave also qualifies as Family Illness Leave, the leave will be designated as Military Caregiver Leave.

e. Serious Health Condition: A "serious health condition" is an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.



f. Small Necessities Leaves: Small Necessities Leaves are absences of an employee for any of the following purposes:

- to participate in school activities directly related to the educational advancement of a child of the employee, such as parent-teacher conferences or interviewing for a new school;
- to accompany a child of the employee or an elderly relative of the employee to routine medical or dental appointments, such as check-ups or vaccinations; or
- to accompany an elderly relative of the employee to appointments for other professional services related to the elderly relative's care, such as interviewing at nursing or group homes.

For purposes of this policy, an elderly relative of an employee is an individual of at least 60 years of age who is related by blood or marriage to the employee.

g. Notice and Scheduling of Leave and Related Employee Responsibilities:

(1) Required Information: Employees who seek a Family and Medical Leave, Parental Leave, or a Small Necessities Leave must provide sufficient information for the Town to determine if the leave may qualify for FMLA, Parental Leave, or SNLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider or circumstances supporting the need for a Qualifying Exigency Leave or a Military Caregiver Leave. Employees must also inform the Town if the requested leave is for a reason for which a Family and Medical Leave was previously taken or certified. Employees may also be required to provide a certification and periodic recertification supporting the need for leave. Unless a longer period is specified, a medical certification or recertification must be completed and returned to the Town within 15 days of the Town's request. Moreover, employees on leave may be contacted periodically for updates concerning their status and intent to return. Employees are required to be fully responsive to such requests for updates.

(2) Advance Notice of Foreseeable Leave: Except as otherwise provided below, employees must provide 30 days' advance notice of the need to take a Family and Medical Leave when the need for the leave is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable. However, if the leave is a Birth, Adoption and Child Care Leave or a Massachusetts Parental Leave, the required advance notice period is two weeks.

(3) Form of Notice of Foreseeable Leave: To provide notice, an employee is required to complete the Family and Medical Leave Act Request Form (Attachment D) and submit it to the Executive Administrator, except in unusual circumstances.

(4) Scheduling of Foreseeable Leaves: If an employee plans to take a Family Illness Leave, an Employee Illness Leave or Military Caregiver Leave because of planned medical treatment, the employee must make an effort to schedule the treatment to reduce the disruption to the Town, subject to the health care provider's approval. An employee should generally consult with his or her supervisor to explore alternatives to reduce the disruption to the Town.

(5) Notice of Unforeseeable Leave: When a Family Illness Leave, an Employee Illness Leave, Military Caregiver Leave or Qualifying Exigency Leave is needed due to a reason that was not foreseeable, an employee should give the Executive Administrator verbal or written notice as soon as he or she reasonably can.

(6) Notice of Small Necessities Leave: When an employee's need for a Small Necessities Leave is foreseeable, the employee should provide at least seven days' written notice. If the employee's need for such an absence is not foreseeable, the employee should provide as much notice as is practicable.

(7) Effect of Insufficient Notice: An employee's failure to give adequate notice may delay, or may result in the denial of, the employee's right to take a Family and Medical Leave or a Small Necessities Leave or may affect the employee's rights to a Massachusetts Parental Leave.

h. Confirmation of Leave:

(1) Family and Medical Leaves: The Town shall inform employees who request Family and Medical Leave whether they are eligible for a leave that is covered by the FMLA. If they are, the notice shall specify any additional information that the Town requires as well as the employees' rights and responsibilities. If they are not eligible, the Town shall provide at least one reason of the ineligibility determination. The Town shall determine if leave will be designated as FMLA protected and the amount of leave counted against the employee's leave entitlement. If the Town determines that the leave is not FMLA-protected, the Town shall inform the employee.

The Town may determine that an extended leave qualifies as FMLA leave and notify the employee that the employee is taking FMLA leave without the employee soliciting it.

(2) Small Necessities Leaves: An employee who requests Small Necessities Leave may be required to provide a certification stating the date of the absence, the duration of the absence, and the purpose of the absence. The Town reserves the right to require any employee to provide reasonable additional information to verify the reason for requesting a leave.

i. Length of Leave and Restoration Rights:

(1) General: In general, except for those employees taking Military Caregiver Leave, an employee will be entitled to a maximum of 12 weeks of Family and Medical Leave and 24 hours of Small Necessities Leave during any 12-month period. The 12-month period is a rolling period measured backward from the date an employee uses any leave under this policy. Each time an employee takes any Family and Medical Leave, the remaining leave entitlement will be any balance of the 12 weeks that has not been used during the immediately preceding 12 months.

In the case of Military Caregiver Leave, an employee is entitled to a maximum of 26 weeks of leave in the 12-month period beginning on the first day that the employee takes this form of leave and ending 12 months later.

When an employee is eligible for both a Birth, Adoption and Child Care Leave and a Massachusetts Parental Leave, both leaves will run concurrently. However, the expiration of FMLA rights does not itself deprive an employee of MPLA rights, if the employee continues to be eligible for MPLA leave after the expiration of FMLA Leave.

(2) Nature of the Leave: Unless otherwise approved, a Birth, Adoption and Child Care Leave or a Massachusetts Parental Leave must be taken at one time and must be taken before the end of the 12-month period beginning on the date of the child's birth or placement. The other Family and Medical Leaves may be taken through either a reduced working schedule or intermittently if such an arrangement is medically necessary (or if the Town approves such an arrangement in its discretion). If an employee is entitled to a Family Illness Leave, an Employee Illness Leave or a Military Caregiver Leave or if the employee is permitted to work on a reduced work schedule or intermittent basis, the Town may transfer the employee temporarily to a position for which he or she is qualified and which has equivalent pay and benefits if the alternative position would better accommodate the recurring leaves than the employee's regular position. Use of intermittent or reduced schedule leave is measured in increments of one hour. Qualifying Exigency Leave may also be taken on an intermittent basis.

(3) Special Rule Applicable to Spouses who are Both Employed by the Town: If the Town employs both spouses, the combined total Family and Medical Leave to which they will be entitled together will be 12 weeks in any 12-month period if the leave is taken as (1) a Family Illness Leave to care for the employee's parent or (2) Birth, Adoption and Child Care Leave.

(4) Restoration Rights:

General: At the end of a Family and Medical Leave or a Small Necessities Leave, an employee will generally have the right to return to his or her last position before the leave or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. An employee returning from a Massachusetts Parental Leave will generally have the right to return to her/his last position or a similar position. In returning from any of these leaves, the employee will not lose any benefit rights, such as vacation, to the extent that those benefit rights accrued before the leave period.

Extension of Leave: In the event that a Family and Medical Leave is extended beyond a level totaling 12 weeks of leave over 12 months (or 26 weeks in the case of Military Caregiver Leave), the leave may become a "personal leave" at the Town's discretion and the Town will consider the possibility of restoration but will not guarantee restoration. The determinations regarding whether to grant an extension and to grant restoration after an extension will be made in the Town's discretion after considering factors such as the purpose of the leave extension, the employee's length of service, the employee's overall employment record, the employee's position, and the Town's assessment of its needs. For details on the duration of and procedures associated with personal leaves of absence, please see Leave Without Pay, Section 5.3.

Certification Before Return: Before an employee may return from an Employee Illness Leave that has continued for at least 5 calendar days, the employee's health care provider may be required to certify that the employee is able to resume his or her job. The employee will be required to bear the costs of such a certification.

j. Pay and Benefits:

(1) Pay: Family and Medical Leaves, Small Necessities Leaves and Massachusetts Parental Leaves are not paid leaves. However, an employee may substitute a paid leave for which the employee is eligible for otherwise unpaid leave. Such a substitution will be counted against the employee's use of leave. The leave will remain subject to all protections that would apply if the leave were taken on an unpaid basis. For example, if an employee takes an

Employee Illness Leave, he or she may be entitled to the Town's short-term disability pay under the Town's policies. Employees who seek paid leave will need to meet the notice and qualification requirements under the paid leave policy. If no other paid leave is available but an employee is eligible for accrued paid leave, such as sick time, vacation pay or paid personal days, the employee will be required to use that accrued leave during a leave under this policy until it is exhausted. Employees who are receiving Workers Compensation benefits and also qualify for Family and Medical Leave status will be required to take Family and Medical Leave.

(2) Maintenance of Health Benefits: During a Family and Medical Leave, the Town will continue the employee's medical and dental insurance coverage, provided that the employee pays for the regular employee share of such coverage on a timely basis as if he or she had remained actively employed. During any paid leave, the employee share of the premiums will be deducted from the employee's pay. During the unpaid portion of a Family and Medical Leave, the employee will be required to pay the employee's share by delivering the payment so that it is received by the Town no later than the fifth (5) day of each month.

If the employee fails to return from the leave, the Town may be entitled to recover from the employee the portions of medical and dental insurance premiums that were paid for by the Town with respect to the unpaid portion of the leave. The Town will be entitled to recover these amounts unless the employee's failure to return was due to a serious health condition (within the meaning of the FMLA) or if there are other circumstances beyond the employee's control. If the employee states that he or she is unable to return from the leave because of a serious health condition, the Town may require the employee to provide a medical certification.

An employee who is eligible only for a Massachusetts Parental Leave and not a Birth, Adoption and Child Care Leave is not entitled to health benefit continuation during the leave.

k. Medical Records: Documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members will be maintained separately and treated as confidential medical records, except that in some legally recognized circumstances, the records (or information in them) may be disclosed to supervisors and managers, first aid and safety personnel, or government officials as permitted by law.

l. Violations and Enforcement:

(1) Unlawful Actions by Employers: The FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or
- Terminate or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or related to the FMLA.

(2) Enforcement: An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. The FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

m. Authority: The interpretation and administration of this policy shall be the responsibility of the Personnel Board, and overseen by the Selectboard.

## 6.6 LEAVE POLICY FOR VICTIMS AND FAMILY MEMBERS OF ABUSIVE BEHAVIOR

### A. Purpose:

This policy outlines the basic procedures required and rights afforded employees covered by the Domestic Violence Act, M.G.L. c. 149, section 52E. Pursuant to M.G.L. c. 149, section 52E, the Town shall provide 15 days unpaid leave for a qualifying employee to seek or obtain medical attention, counseling, victim services or legal assistance, secure housing; obtain a protective order from a court; appear in court or before a grand jury; meet with a district attorney or other law enforcement official; or attend child custody proceedings or address other issues directly related to the abusive behavior against the employee or family member of the employee.

### B. Definitions:

**Eligible Employee:** one who performs services for and under the control and direction of an employer for wages or other remuneration.

**Family Member:** a parent, step-parent, child, step-child, sibling, grandparent or grandchild; a married spouse; persons in a substantive dating or engagement relationship and who reside together; persons having a child in common regardless of whether they have ever been married or resided together; or persons in a guardianship relationship.

### C. Leave Provisions:

The employee will be permitted to take up to 15 days of unpaid leave from work in any 12 months period if all of the following criteria are met:

1. the employee, or a family member of the employee, is a victim of abusive behavior as defined in the Law;
2. the employee is using the leave from work to: seek or obtain medical attention, counseling, victim services or legal assistance; secure housing; obtain a protective order from a court; appear in court or before a grand jury; meet with a district attorney or other law enforcement official; or attend child custody proceedings or address other issues directly related to the abusive behavior against the employee or family member of the employee; and
3. the employee is not the perpetrator of the abusive behavior.

### D. Confidentiality of Documentation:

The Town may request that an employee provide documentation evidencing that the employee or employee's family member has been a victim of abusive behavior, and that the leave is or has been taken consistent with the Law. However, the employer is required to keep confidential all information related to the employee's leave under the Law. This information shall not be disclosed by the employer, except to the extent that disclosure is:

1. requested or consented to, in writing, by the employee;
2. ordered to be released by a court;
3. otherwise required by applicable federal or state law;
4. required in the course of an investigation authorized by law enforcement; or
5. necessary to protect the safety of anyone employed at the workplace.

Any documentation provided to an employer under the Law may be maintained by the employer in the employee's employment record but only for as long as required for the employer to make a determination as to whether the employee is eligible for the leave.

#### E. Responsibilities of Employee

Except in cases of imminent danger to the health or safety of an employee, an employee seeking leave from work under this Law must provide two weeks advance notice of the leave to the employer.

In cases of threat of imminent danger to the health or safety of an employee or the employee's family member, the employee is not required to provide advance notice of leave, but must notify the employer within 3 workdays that the leave was taken or is being taken under the Law. Such notification may be communicated to the employer by the employee, a family member of the employee or any professional who has assisted the employee in addressing the effects of the abusive behavior on the employee or the employee's family member. This notice may be by telephone, in person, in writing or by any other reasonable means to communicate notice.

#### F. Required Documentation:

The Town may request that an employee provide documentation evidencing that the employee or employee's family member has been a victim of abusive behavior and that the leave is taken under the Law. An employee must provide such documentation to the employer within a reasonable period after the employer requests documentation relative to the employee's absence. However, an employer cannot require the employee to show evidence of an arrest, conviction or other law enforcement documentation for such abusive behavior. An employee can satisfy the request for required documentation by providing any one of the following documents to the employer:

1. a protective order, order of equitable relief or other documentation issued by a court of competent jurisdiction as a result of abusive behavior against the employee or employee's family member;
2. a document under the letterhead of the court, provider or public agency which the employee attended for the purposes of acquiring assistance as it relates to the abusive behavior against the employee or the employee's family member;
3. a police report or statement of a victim or witness provided to police, including a police incident report, documenting the abusive behavior complained of by the employee or the employee's family member;
4. documentation that the perpetrator of the abusive behavior against the employee or family member of the employee has either admitted to sufficient facts to support a finding of guilt of abusive behavior, or has been convicted of, or has been adjudicated a juvenile delinquent by reason of, any offense constituting abusive behavior and which is related to the abusive behavior that necessitated the leave under this policy;
5. medical documentation of treatment as a result of the abusive behavior complained of by the employee or employee's family member;
6. a sworn statement, signed under the penalties of perjury provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the employee or the employee's family member in addressing the effects of the abusive behavior; or
7. a sworn statement, signed under the penalties of perjury, from the employee attesting that the employee has been the victim of abusive behavior or is the family member of a victim of abusive behavior.

G. Leave:

Duration: an employee may take up to 15 days of unpaid leave from work during any 12 month time period. The Employee must first exhaust all annual or vacation leave, personal leave and sick leave already available to the employee prior to requesting or taking leave under the Law.

Employment Protections: The Town will not terminate or in any other manner discriminate against an employee for exercising the employee’s rights under the Law. Upon the employee’s return from such leave the employee is entitled to restoration to the employee’s original job or to an equivalent position.

If an unscheduled absence occurs, the Town cannot take any negative action against the employee if the employee, within 30 days from the unauthorized absence or within 30 days from the last unauthorized absence in the instance of consecutive days of the unauthorized absences, provides documentation required under the Law.

6.7 RETIREMENT 

All regular employees working twenty (20) or more hours per week on a regular basis must belong to the Franklin County Retirement System. Effective January 1, 1996, no temporary employees or employees working less than twenty (20) hours per week on a regular basis shall be considered eligible for membership in the system, except that elected officials may elect to become members as provided by MGL Chapter 32.

Any temporary or part-time employee hired after January 1, 1996 who later becomes eligible for membership shall have the option of buying back creditable service time at the rate proportionate to actual time worked. Actual time worked by employee to be provided by and certified by the Town Treasurer.

DEDUCTION RATES:

Membership Date	Rate
Prior to 01/01/75	5%
01/01/75 to 12/31/83	7% *
01/01/84 to 06/30/96	8% *
After 06/30/96	9% *

\*Note: Employees hired after 01/01/79 with earnings over \$30,000 will have an additional 2% deducted on amount of earnings over \$30,000.

6.8 MANDATORY OMNIBUS BUDGET RECONCILIATION ACT (OBRA)

Employees working less than twenty (20) hours per week must contribute 7½% of their earnings to the Commonwealth's Deferred Compensation Plan, in lieu of Social Security taxes, unless they are: (1) Temporary workers hired for snow, flood, or similar emergencies, or (2) Election officials.

6.9 DISABILITY RETIREMENT 

All Town employees are covered under the Massachusetts Contributory Retirement Law as defined by Massachusetts General Laws Chapter 32 which provides for both accidental and ordinary disability.

 Indicates sections that are not applicable to employees who work less than twenty (20) hours per week.

## 7. INSURANCE BENEFITS PACKAGE

### 7.1 HEALTH INSURANCE<sup>⚠</sup>

- a. Eligibility: Town employees working a minimum of 20 hours per week in a combination of regularly scheduled regular or temporary positions with exclusion of seasonal or emergency employees.
- b. Contribution: Town contributes 75% of either an individual or family plan for whichever health plan the employee participates in.
- c. Options: The Selectboard will choose the plans to be offered based on the Hampshire County Group Insurance Trust.
- d. Following termination of employment, federal rules and regulations govern continuation of health insurance under COBRA, participant pays 102% of the premium for 18-36 months depending on circumstances.

### 7.2 LIFE INSURANCE<sup>⚠</sup>

- a. Eligibility: Same as health insurance.
- b. Contribution: Town pays 75%.
- c. Maximum benefit: \$5,000 death benefit with double indemnity for accidental death, or fraction thereof in event of accidental dismemberment.

### 7.3 LONG TERM DISABILITY<sup>⚠</sup>

- a. Eligibility: All employees working 20 hours or more per week may elect to enroll in Long Term Disability Insurance.
- b. Contribution: Employee pays full amount of age-related group premium.
- c. Possible Benefit (benefits for each claim will be determined on a case-by-case basis contingent on several factors): 50% of gross basic monthly earnings after 90 continuous days of disability.
- d. Other: New employees must enroll within 30 days of hire (or 30 days from achieving enrollment eligibility state (i.e., 20 hours/week)). If employee does not enroll during initial eligible period, the insurance carrier must approve a Personal Health Statement before coverage begins. Current employees may enroll upon approval of their Personal Health Statement by the insurance carrier.

### 7.4 LONG TERM CARE INSURANCE

- a. Eligibility: All active employees working 17<sup>1</sup>/<sub>2</sub> hours or more per week, retired employees of member units of the Hampshire County Group Insurance Trust, and other family members.
- b. Contribution: Employee pays full amount of premium.
- c. Possible Benefit: Coverage of costs involved in facility based care (nursing home, hospice care, assisted living) and community-based care (home care, adult day care, home modification, assistive equipment and technology).
- d. Other: New hires must enroll within 30 days of hire without providing proof of good health. All other eligible employees and family members may enroll anytime but are required to complete a medical questionnaire and be approved by the insurance carrier before coverage becomes effective. Program administered directly through the Hampshire County Group Insurance Trust.

<sup>⚠</sup> Indicates sections that are not applicable to employees who work less than twenty (20) hours per week.



## 7.5 WORK RELATED DISABILITY

### 7.5.1 WORKERS' COMPENSATION

- a. Eligibility: All employees as defined by applicable Workers' Comp. laws and regulations.
- b. Contribution: Town pays 100% of the premium.
- c. Possible Benefits: Benefits for each claim will be determined on a case-by-case basis contingent on several factors.
  1. Death: Maximum benefit is dependent on various factors
  2. Medical: Medical benefit may be unlimited.
  3. Lost wages: In accordance with Mass. General Laws Chapters 398 and 152, 60% of wages lost due to disability from work-related injury or illness after 5 days of incapacity; benefit may be payable retroactive to day one of incapacitation if 21 or more days incapacitation are required.

During a period of disability an employee may use a combination of available sick leave, vacation and workers' compensation to maintain the normal, non-overtime, weekly wage. Under no circumstances may an employee receive more than their normal weekly wage.

Employees shall not continue to accrue sick, vacation, or personal time, nor will they be paid for holiday time, while being paid by Workers' Compensation. Benefits will resume accrual upon return to work.

#### d. Procedures:

Employees who have accidents requiring emergency care should be taken immediately to the emergency room of the nearest hospital. From Leverett, both Cooley Dickinson in Northampton and Franklin Medical Center in Greenfield are approved locations. The employee is not limited to going to these locations should another location be closer, more convenient to reach, or more medically appropriate. Follow-up and non-emergency medical appointments should be completed as recommended by the employee's primary care physician and/or the emergency room physicians. Any disability related to a work injury must be documented by a physician.

Employees should report all accidents and injuries incurred in the workplace to their Department Head as soon as possible. The Department Head should complete the Supervisor's Report of Accident-Intake Form with the employee if possible. The employee also should sign the Medical Authorization Form at this time. These forms are attached as Attachment E.

The Department Head should report the accident to the Executive Administrator and provide the Executive Administrator with the completed forms as soon as possible. The Executive Administrator will contact the Town's insurance agent, MIIA, at phone 800-799-6442 or fax 617-753-9987. In the absence of the Executive Administrator, the Department Head should report the claim. All accidents should be reported regardless of severity or amount of time lost. The reporting person should have the information requested on the Intake Form (Attachment E) available at the time of call.

Once MIIA has received report of the injury, they will complete the required forms (including Form 101) and submit them to the Department of Industrial Accidents (DIA) and back to the Town within the required time frames. MIIA will assign a Claims Adjuster to oversee the claim.

MIIA will provide assistance in calculating days lost due to the accident, called disability days. The Department Head should track all days and time lost by the employee due to the accident and provide this to the Executive Administrator for reporting to MIIA. The lost days do not have to be consecutive. For accidents that require less than five (5) disability days, the employee may expend sick time to receive compensation for the missed time. For accidents that require five (5) or more disability days, Workers' Compensation may pay the employee 60% of their average weekly wage, as determined by the previous 52 weeks of earnings. The employee may expend accumulated sick time and/or vacation time, until the employee's sick/vacation time is exhausted, to receive the remaining 40% of their regular pay from the Town. Once a claim that has resulted in five (5) or more disability days has been reported, copies of the employee's payroll for the previous 52 weeks should be sent to MIIA's Claims Adjuster.

Medical bills of all work-related accidents, regardless of amount of time lost, may be covered by Workers' Compensation insurance, contingent on several factors.

All medical bills and statements related to the accident, including co-pays for appointments and prescriptions, should also be forwarded to the Executive Administrator for submission to MIIA to facilitate payment/reimbursement at rates determined by the DIA.

Long term claims will be handled by MIIA with regular updates provided to the Town. The Department Head and the employee are expected to cooperate in all investigations and requests for information made by MIIA.

The Executive Administrator shall maintain all Workers' Compensation case files in a secure, locked location.

#### 7.5.2 FIRE AND POLICE INJURED ON DUTY LAWS

All police and fire personnel are covered for injuries sustained in the line of duty without fault of his/her own under the provisions of Massachusetts General Laws Chapter 41 §111F and §100 and may be compensated by the Town's insurance policy or by the Town itself. The Selectboard and Executive Administrator may choose to utilize the services of a third party administrator or their insurance agent for assistance for any and/or all of the decisions to be made by them in this policy.

Employees shall not continue to accrue sick, vacation, or personal time, nor will they be paid for holiday time, while being paid by Police and Fire Accident Leave. Benefits will resume accrual upon return to work.

Police Officers that are covered by a collective bargaining agreement must also reference their union contract for additional provisions.

Initially a medical determination will be required to decide the appropriateness of coverage under this section. The following procedures shall be followed in order to comply with the policies of the Town and relevant state statutes with regard to work-related illnesses or injury.

### Reporting

It is the responsibility of the employee to provide the Executive Administrator with such reports as the Executive Administrator may require relative to the illness or injury. Injury on Duty (IOD) Forms 1, 2, 3, and 4 are attached as Attachment F to this policy. These reports include, but are not limited to:

1. Whether or not medical attention is sought, any employee who suffers an alleged work-related illness or injury must notify his or her supervisor of the illness or injury and complete the injury on duty form approved by the Town (Form IOD 1) and submit it to the Executive Administrator within twenty-four (24) hours of illness or injury. In emergency situations this form should be submitted as soon as the employee has recovered enough to submit the report or may be completed by the employee's immediate supervisor.
2. A complete written incident report of the accident or illness must be submitted to the Executive Administrator within seven (7) calendar days.
3. Notice of employee injury requiring hospital admission should be provided to the Executive Administrator immediately.
4. An employee who files a lawsuit or claim against a third party in connection with a job-related injury must notify the Executive Administrator in writing at the time the suit is filed.

### Restrictions

Injured on duty status or indemnification for medical expenses will not be granted or allowed if:

1. The reported injury is feigned or simulated.
2. The reported injury arises in any way out of any serious or willful misconduct on the part of the individual.
3. The reported injury arises from over-indulgence in alcohol or the illegal use or abuse of narcotic drugs.
4. The individual fraudulently, by concealment, false statement or otherwise, seeks to improperly sway any attending physician or surgeon concerning his or her case.
5. The individual refuses or fails to conform to the instructions and/or recommendations of an attending physician, surgeon or supervisor.
6. The individual fails to cooperate with the Town in obtaining medical or other evidence relating to his or her incapacity and treatment therefore.
7. The medical data provided, which must be evaluated prior to an acceptance of a claim, fails to support the claim of injury or does not correlate with the injury claimed.

### Acceptance of Injured on Duty Cases

1. All requests for IOD benefits must be made to the Executive Administrator and then formally accepted by the Selectboard.

2. Any employee requesting IOD leave shall make a request for such benefits using a form provided by the Executive Administrator (Form IOD 4) and shall execute and deliver to the Executive Administrator a release for all medical and hospital records on a form provided by the Town (Form IOD 2). Medical information will be handled on a need to know confidential basis.
3. The Selectboard, who may choose to seek the advice of a third party administrator or the Town's insurance agent, shall make an initial determination as to the employee's entitlement to benefits under the Injury on Duty law. If a medical examination is required, the determination for benefits will be made within twenty-one (21) days of receipt of the physician's report.
4. The employee will be placed on non-occupational sick leave pending the review of his/her entitlement to IOD benefits, if such review is necessary.
5. An employee requesting benefits under this section must provide medical certification from his/her treating physician documenting the nature of the injury/illness, the prognosis for further treatment and expected date of return to work, and the physician's opinion as to causality (Form IOD 3).

#### Reimbursement for Medical Expenses – Approved IOD Status

1. The employee shall be responsible for obtaining all reports and bills relating to his/her examinations and treatment. Such bills should be submitted to the Executive Administrator. The Town will pay no bills until receipt of all reports relating to the examination or treatment.
2. The Town will pay reasonable and customary charges as determined by the Selectboard. Failure to receive advance approval for a particular treatment regimen may result in the employee's being responsible for any balance between the billed amount and the approved payment amount.
3. The Selectboard or its designee will monitor the payment of medical expenses as part of a medical case management program. The Selectboard will request additional information for any medical treatment that does not appear appropriate and necessary.

#### Termination of Injured on Duty Status

An employee who has been determined to be eligible for IOD benefits by the Town shall have such benefits terminated if any of the events on the list below take place. This list includes, but is not limited to, the following events:

1. The employee returns to full duty.
2. The employee retires or is pensioned in accordance with Mass. General Laws.
3. The employee fails to comply with all obligations as required by this policy after written notice of such failure and steps to be taken to correct such failure have been given and a reasonable time allowed for compliance.
4. The employee resigns from the department.
5. The employee is terminated for just cause, unrelated to his/her IOD status and in accordance with applicable law.
6. The applicable general laws, as amended, provide for other reasons for termination of IOD benefits.

7. A physician designated by the Selectboard or chosen by the employee determines that the employee is no longer incapacitated.
8. Any other circumstances occur that constitute eligibility for termination of benefits.

Nothing herein shall preclude the Town from sending the employee to a Town-designated physician for re-examination at any time, provided that the Town shall not re-examine the employee less than thirty (30) days after a third physician has examined the employee.

#### Convalescence

1. An employee who has been approved for IOD status shall not engage in any gainful employment without providing written permission of the employee's treating physician to the Selectboard and the approval of the Selectboard.
2. When so ordered, an employee who has been approved for IOD benefits shall report for medical/psychological examinations, including Independent Medical Examinations (IME's) at reasonable intervals to determine whether the treatment being sought is appropriate or whether the employee is still incapacitated.
3. An employee who has been approved for IOD status shall comply with all requests for information and/or other medical case management requirements related to the illness/injury made by the Town or by its designated occupational health consultant.

#### Sanctions

The failure to comply with the procedures contained herein, after written notice of such failure and steps to be taken to correct such failure have been given and a reasonable time allowed for compliance, may warrant the Selectboard's taking of disciplinary action, including termination of the employee's IOD status.

### 7.6 FEDERAL PUBLIC SAFETY OFFICERS BENEFITS ACT

Beginning on October 1, 1988, the Federal Public Safety Officers Benefits Act death and disability benefit is available to all public safety officers.

### 7.7 EMPLOYEE ASSISTANCE PROGRAM

An employee who is experiencing difficulties in his/her life to the extent that job performance, workplace atmosphere or general well-being is affected, is encouraged to seek help through the Employee Assistance Program (EAP). The EAP is designed to help employees and members of their immediate households by providing crisis intervention, assessment, referral and short-term counseling service in order to help identify and resolve personal issues and stress, illness, alcohol and other drug abuse, legal issues, financial and marital difficulties, as well as other distresses. The EAP is confidential and information cannot be released without the employee's permission except as required by law. The EAP can be accessed by contacting the Executive Administrator, the Town Treasurer, or the EAP, Health Resources, directly at 800-451-1834.

## **8. HEALTH AND SAFETY**

Introduction: The health and safety of employees is a primary concern of the Town of Leverett. Please use common sense to avoid needless accidents and use appropriate safety equipment. Employees must immediately report to the Department Head any condition which he/she believes could be injurious. If an employee is injured in a work-related accident, the employee will be covered by Workers' Compensation only if he/she reports the incident to the Department Head immediately.

### **8.1 RIGHT TO KNOW**

The Right to Know law provides certain rights to employees regarding the communication of information on toxic and hazardous substances. These rights include a notice posted in the workplace informing employees of their rights under the law; annual training for those who work with toxic or hazardous substances; and the right to obtain and examine the Material Safety Data Sheet (MSDS) or Safety Data Sheets (SDS) for any toxic or hazardous substances to which employees are, may be, or have been exposed. For more information, please ask the Department Head.

### **8.2 DRUG AND ALCOHOL FREE WORKPLACE**

The Town of Leverett seeks to ensure a safe, healthy and productive work environment for all employees. Evidence clearly indicates that alcohol and other drug abuse by employees results in low productivity, high absenteeism, excessive use of medical benefits and a risk to personal safety as well as that of co-workers. In a good faith effort to comply with the Drug-Free Workplace Act of 1988, the Town prohibits the use of alcohol and/or illegal drugs/controlled substances on Town premises.

It is prohibited for any employee of the Town of Leverett to unlawfully manufacture, distribute, sell, dispense, transfer, possess, or use controlled substances at the workplace or on other premises while conducting Town of Leverett business. Controlled substances are defined for the purposes of this policy as those groups of drugs whose use is limited or prohibited by federal and/or state law and alcohol. Further prohibited is the use, sale, possession, distribution, dispensation, manufacture, or transfer of controlled substances on non-working time to the extent that such use impairs an employee's ability to perform his/her job or where such use, sale, possession, distribution, manufacture or transfer affects the reputation of the Town to the general public or otherwise threatens its integrity.

All reports of drug abuse in the workplace will be investigated promptly and in an impartial and as confidential a manner as possible by the Selectboard, or designee, to ensure appropriate action. Any employee who is found, after an investigation, to have violated the drug-free workplace policy may be required to participate in a drug rehabilitation program and/or will face disciplinary action up to and including termination.

The Town recognizes that drug dependency is an illness and a major health problem. The Town's objective is to prevent drug related offenses prior to their occurrence. Employees who wish to obtain help in dealing with such problems are encouraged to contact the Executive Administrator, or their health insurance provider for assistance.

#### **DRUG FREE WORKPLACE POLICY STATEMENT**

In accordance with 41 USCS §§701-707, the Town of Leverett will provide a drug free workplace. This drug free workplace policy statement certifies that:

(a) All Town employees will review and retain a copy of this statement. Employees are hereby notified that unlawful manufacturing, distribution, dispensation, sale, transfer, possession or use of a controlled substance is prohibited when in the employ of the Town of Leverett. Any employee in violation of the above statement will be subject to disciplinary action, which may include termination.

(b) The purpose of establishing a drug free workplace is to inform Town employees about:

- (1) The serious dangers of drug abuse in the workplace.
- (2) The Town's policy of maintaining a drug free workplace.
- (3) Available drug counseling, rehabilitation and employee assistance programs.
- (4) The consequences of employee drug use in the workplace (see (a) above).

(c) All employees will be given a copy of this statement to retain and review.

(d) As a condition of employment, all employees must abide by the terms of this statement and notify the Department Head or Selectboard within five (5) days of any criminal drug statute conviction or who plead guilty or nolo contendere/ "sufficiency of facts" to such charges, of which the actual criminal conduct itself occurred in the workplace.

(e) The Town will notify the appropriate federal granting agency, if any, within ten (10) days after receiving notice of any criminal drug statute conviction or event as detailed in (d) above.

(f) The Town will, within thirty (30) days of receiving any such notice under (d) above, take appropriate personnel action against an employee, which may include disciplinary action up to and including termination; and/or require such employee to participate satisfactorily in an approved drug abuse or assistance program.

(g) The Town will make a good faith effort to maintain a drug free workplace through implementation of this policy statement.

Employees who are prescribed a medicine that is a controlled substance shall get a written statement from their medical provider or physician as to whether or not the medicine will affect the employee's ability to perform safety sensitive functions, such as driving or other activities required for the performance of their job.

### 8.3 COMMERCIAL DRIVER'S LICENSE ALCOHOL AND DRUG TESTING POLICY

The following is the policy of the Town of Leverett regarding testing associated with alcohol misuse and illegal drug use by those employees operating motor vehicles which require a Commercial Drivers' License (CDL). The terms alcohol misuse, illegal drug use, and substance abuse are used interchangeably herein. Definitions for specific terms used within this Section/policy can be found below.

This policy applies to all employees subject to the regulations of the Federal Highway Administration, Department of Transportation (DOT) Alcohol and Drug ruling that includes every person who operates a commercial motor vehicle (CMV) in interstate or intrastate commerce, and is subject to the commercial driver's license requirements of Part 383. This policy supercedes any other Town policy or practice on the subject of drug and alcohol testing. At any time, the Town of Leverett may, at its discretion, amend, supplement, modify, or change any part of this policy. This policy does not represent an expressed or implied contract. If an employee has any questions about this policy or the educational materials connected with it, please direct them to the Executive Administrator or the Highway Superintendent, the Town's Drug Program Coordinators.

As a condition of employment with the Town of Leverett, employees must sign a consent form agreeing to participate in this program and comply with the program.

All Town of Leverett employees who possess a CDL license and who are subject to this policy must notify the Town's Drug Program Coordinator (Highway Superintendent) if they receive any traffic/moving motor vehicle conviction in any vehicle, even when the conviction is received in a personal vehicle and/or on personal time. Forms associated with this policy are attached as Attachment G.

#### Definitions

"Alcohol," the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

"Alcohol concentration," the alcohol in a volume of breath, expressed as grams of alcohol per 210 liters of breath, as indicated by an evidential breath test such as a breathalyzer.

"Alcohol use," the consumption of a beverage, mixture, or preparation, including medications, containing alcohol.

"Breath alcohol technician (BAT)," an individual who instructs individuals in the alcohol testing process and operates and evidential breath testing (EBT) device.

"Confirmation test, alcohol," a second test, following a screening test with a result of 0.02 or greater that provides quantitative measurement of alcohol concentration.

"Confirmation test, drug," a second test to identify the presence of a specific drug or metabolite. In order to ensure reliability and accuracy, this test is separate from and uses a different technique and chemical principle from that of the drug-screening test.

"Controlled substances," used interchangeably with the term "drugs" and "drug use" and, unless otherwise provided, refer to marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines (including methamphetamines) and any other substances not prescribed by a licensed health care provider.



“Driver,” any person who operates a commercial motor vehicle (CMV) including:

- Full-time, regularly employed drivers
- Casual, intermittent or occasional drivers
- Leased drivers
- Independent, owner-operator contractors who are either directly employed by or under contract to an employer or who operates a commercial motor vehicle at the direction of or with the consent of an employer.

“Drug use,” used interchangeably with the term “controlled substances” and, unless otherwise provided, refer to marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines (including methamphetamines) and any other substances not prescribed by a licensed health care provider.

“Evidential Breath Testing (EBT) Device,” a device used for alcohol breath testing that has been approved by the National Highway Safety Administration.

“Medical Review Officer (MRO),” a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer’s drug testing program. The MRO must have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual’s confirmed positive test, medical history, and other relevant biomedical information.

“Minor,” a person below the age when full civil and personal rights can be exercised (in this context, eighteen (18) years of age).

“Municipal vehicle,” those automobiles, trucks, vans, or other self-propelled equipment owned, rented, or leased by the Town and licensed for travel on a public way.

“Screening test, alcohol,” the initial test to determine if a driver has a prohibited concentration of alcohol in his or her system.

“Screening test, drug,” a screen to eliminate ‘negative’ urine specimens from further consideration.

“Split sample test,” a test of the split urine sample for the existence of drugs that is conducted, if requested by the employee, after a positive drug confirmation test is received.

“Substance abuse,” refers to the patterns of substance use that result in health consequences or impairment in social, psychological, and occupational functioning.

“Substance abuse professional (SAP),” a licensed physician (medical doctor or doctor of osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

#### Safety-Sensitive Functions

Regulations are based on the delineation of safety-sensitive functions that are defined as all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety sensitive functions shall include:

- All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver is relieved from duty by the employer;
- All time inspecting equipment as required by Sections 392.7 and 392.8, which includes inspecting service brakes (including trailer brake connections), parking (hand) brakes, steering mechanism, lighting devices and reflectors, tires, horn, windshield wiper or wipers, rear vision mirror or mirrors, coupling devices, fire extinguishers, spare fuses, or warning devices for stopped vehicles, or otherwise inspecting, servicing, or conditioning any CMV at any time;
- All time spent at the driving controls of a CMV in operation;
- All time, other than driving time, in or upon any CMV, except time spent resting in a sleeper berth (a berth conforming to the requirements of Section 396.76);
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

#### Alcohol Prohibitions

The following prohibitions are established by the DOT relative to alcohol use for performance of safety-sensitive functions:

1. A driver may not report for duty or stay on duty:
  - a. With a breath alcohol concentration of 0.04 or greater
  - b. If in possession of alcohol, unless it is being transported as cargo (this includes any product, medication, or food containing alcohol regardless of the alcohol content)
  - c. If using alcohol
  - d. Within four (4) hours of using alcohol
2. A driver who has an accident may not use alcohol until post-accident testing is done or for a period of eight (8) hours, whichever comes first
3. Drivers cannot refuse to submit to alcohol testing
4. Employers who know about any of the above acts cannot permit the driver to perform a safety-sensitive function.

#### Drug Prohibitions

The following prohibitions are established by the DOT relative to drug use for performance of safety-sensitive functions:

1. The Federal Highway Administration bans the use of controlled substances by drivers.
2. Drivers may not report for duty or stay on safety-sensitive duty while using any controlled substance. There may be an exception to this ruling if a medical provider or physician has prescribed a substance and has advised the employee that it does not interfere with the employee's ability to operate a vehicle in a safe manner.
3. Drivers may not report for duty or stay on duty if they have tested positive for a controlled substance.
4. Employers who know about either of the above acts cannot permit the driver to perform a safety-sensitive function.
5. Drivers cannot refuse to submit to drug testing.

Employees who are prescribed a medicine shall get a written statement from their medical provider or physician as to whether or not the medicine will affect the employee's ability to perform safety sensitive functions, such as driving or other activities required for the performance of their job.

#### Alcohol and Drug Testing

The Town reserves the right, within the limits of federal and state laws, to examine and test any employee for the presence of drugs and/or alcohol. Under the conditions of this policy, employees may be asked to submit to a medical examination and/or submit to urine, saliva, and/or breath testing for drugs and/or alcohol. Any information obtained through such examinations may be retained by the Town and is the property of the Town.

Testing to determine the presence of alcohol and/or drugs can be performed in any of the following situations:

1. Pre-Employment: Pre-employment drug testing is required before a new hire can perform any safety-sensitive duties or when a person transfers into a safety-sensitive function from elsewhere in the municipality (no person will be considered for a Driver's position who has had a positive drug and/or alcohol test within two (2) years of his or her application) unless the employee qualifies for an exemption. Pre-employment tests are completed at the expense of the Town.

2. Post-Accident: Post accident testing is required following an accident where a life was lost, an injury was sustained that required medical attention from a medical provider, or the driver was cited for a moving traffic violation. Post-accident alcohol testing should be done within two (2) hours of the accident, but may be done up to eight (8) hours after the accident. If not completed within eight (8) hours after the accident, testing should not be completed at all. If the testing is not completed within two (2) hours after the accident, the Program Coordinator must document why it took longer than two (2) hours. Post-accident drug testing shall be done within thirty-two (32) hours, or not at all. Post-accident tests are completed at the expense of the Town.

3. Random: Unannounced random testing is required on a certain percentage of drivers each year. The random selection process used shall ensure that each driver has an equal chance of being tested each time selections are made. Drivers are randomly selected from the pool. Random testing for alcohol shall be completed just before, during or immediately after performing safety-sensitive work. Random testing for drugs may be done at any time an employee is at work. Once notified that an employee has been selected for random testing, the employee must proceed immediately to the test site. Random testing is done as follows:

- a. 10% of all drivers shall be randomly tested for alcohol during the each year of the testing program. The number to be randomly tested in following years depends on the percentage of positive tests for the entire industry.
- b. 50% of drivers shall be randomly tested for controlled substances during each year of the testing program. The number to be randomly tested in following years depends on the percentage of positive tests for the entire industry.

Random tests are completed at the expense of the Town.

4. Reasonable suspicion: If an employee's supervisor has reason to believe that an employee's behavior or appearance may indicate alcohol or drug abuse, he or she is required to have the employee tested. Testing for reasonable suspicion is based on:

- a. The observances of a trained supervisor
- b. Specific, clearly stated observations concerning the driver's appearance, behavior, speech or body odor.

Observations made for alcohol or drug testing shall be made just before, during or just after the performance of a safety-sensitive function. The supervisor who makes the observation and determines that reasonable suspicion testing should be done may not conduct the alcohol or drug test on the driver. Alcohol testing for reasonable suspicion must be done within two (2) hours of the observation. Drug testing for reasonable suspicion must be done within eight (8) hours of observation. Tests that cannot be done within these time frames shall not be done. An employee cannot report for duty or stay on the job while under the influence of alcohol or drugs or while impaired by alcohol or drugs as shown by behavior, speech or performance that indicates alcohol or drug misuse. An employee will not be allowed to continue to perform safety-sensitive duties until his or her alcohol concentration is less than 0.02 or twenty-four (24) hours have passed from the time of initial observation or until a negative drug test is received. Action regarding alcohol or drug misuse cannot be taken against a driver unless an alcohol or drug test was administered or was refused by the driver. Reasonable suspicion tests are completed at the expense of the Town.

5. Return to duty and follow-up: Return to duty testing is required for drivers who violate prohibitions and are returning to work. In order to return to work, an alcohol concentration of less than 0.02 or a negative drug test is required. Follow-up testing is required when a driver returns to a safety-sensitive function. Depending upon the recommendation of the substance abuse professional consulted after a positive test result, follow-up tests may be performed during the first year back in a safety-sensitive position and may continue for up to five (5) years. Follow-up tests shall be completed at the expense of the employee.

#### Procedures

As part of the alcohol and drug rule and this policy, an employee must submit to alcohol and drug testing as required. If an employee refuses to be tested, he or she cannot continue on the job. Refusal to be tested also includes any time an employee either fails to provide enough breath for alcohol testing or enough urine for controlled substance testing without a valid medical reason after being notified of the testing requirements, or if an employee clearly obstructs the testing process.

Employees are prohibited from switching, tampering with, or adulterating a urine, blood, saliva or breath specimen, or otherwise interfering with the collection and testing process. Such conduct will be viewed as serious misconduct and will result in disciplinary action up to and including termination.

#### Alcohol

All alcohol testing is done by a certified Breath Alcohol Technician (BAT) in a private setting where no one but the employee and the BAT can see or hear the test results. An Evidential Breath Testing device approved by the National Highway Safety Administration must be used. The BAT will ask for identification. The employee may ask the BAT for identification as well.

To complete the test the employee must blow forcefully into the mouthpiece of the testing device. The BAT must show the employee the test result on the testing device. A screening test is done first. If the reading is less than 0.02, the employee will sign the certificate and fill in the date on the form. The test will be reported as negative to the employer.

If the reading is 0.02 or greater, a confirmation test must be done (after fifteen (15) minutes but within twenty (20) minutes of the first test). The employee will be asked not to eat, drink, belch or put anything in his or her mouth. These steps prevent the buildup of mouth alcohol which could lead to an artificially high result. If the screening and confirmation test results are not the same, the confirmation test result is used. Confirmation tests shall be completed at the expense of the Town.

### Drug

Drug testing is done by analyzing a urine sample, which is collected in a private location. Urine specimens are divided into two (2) containers by the collection site person in the employee's presence. These two samples, called the 'primary' and the 'split,' are sent to a testing laboratory certified by the Department of Health and Human Services (DHHS).

At the laboratory, a screening test is performed on the primary sample. If this test is positive for drugs, a confirmation test is required. The confirmation test must use a specialized procedure called gas chromatography/mass spectrometry, to ensure that over-the-counter drugs are not reported as positive. If the confirmation test is positive, the Medical Review Officer (MRO) will notify the employee to find out if there is a medical reason for the drug use. If the employee can document why the substance is being taken and the MRO finds it is a legitimate medical use, the test may be reported as negative to the employer.

After being notified that the confirmation test was positive, the employee has 72 hours to request a test of the split specimen. If the employee makes this request, the split specimen is sent to another DHHS-certified lab for the test. If the employee does not contact the MRO within 72 hours, but can prove to the MRO that he or she had a legitimate reason for not doing so, the MRO can order the split specimen tested. Removal from safety-sensitive duty as required by the DOT following a positive drug test is not delayed to await the result of the split specimen test.

If the analysis of the split sample does not confirm the presence of a drug, the MRO cancels the test and reports this to the DOT, to the employer, and to the employee. If the confirmation test and the split sample test results are not the same, the split sample test result is used. Confirmation tests shall be completed at the expense of the Town.

### Right to Privacy

All drug and alcohol tests are reported to the Town's Drug Program Coordinator (Highway Superintendent) and will remain and be considered confidential. Results will only be disclosed within the Town on a need-to-know basis and will be retained in a secure location with controlled access. The release of an individual's drug and alcohol test results will only be provided in accordance with an individual's written authorization or as otherwise required by applicable federal and state law. However, the results may be disclosed to the decision maker in a lawsuit, grievance, or other proceeding initiated by, or on behalf of, the employee.

### Violation of Policy

Consequences for violating the alcohol or drug prohibitions are as follows:

1. Alcohol violations:
  - a. Removal from safety-sensitive functions
  - b. Prohibition from return to safety-sensitive duties until an evaluation has been done and any recommended treatment is completed
  - c. Employees with an alcohol concentration of 0.02 or greater but less than 0.04 are prohibited from returning to safety-sensitive duties for at least twenty-four (24) hours
  - d. Disciplinary action as outlined below.

The employee will not be paid for the time between a positive test and return to safety-sensitive functions and may not apply accrued sick, vacation or personal time to be paid.

2. Drug violations:
  - a. Removal from safety-sensitive functions
  - b. Prohibition from return to safety-sensitive duties until an evaluation has been done, recommended therapy is completed, and a verified negative drug test is produced
  - c. Disciplinary action as outlined below.

The employee will not be paid for the time between a positive test and return to safety-sensitive functions and may not apply accrued sick, vacation or personal time to be paid.

Any employee refusing to cooperate with or submit to questioning, medical or medical tests or examination, when requested to do so, or when conducted by the Town or its designee, is in violation of this policy and is subject to disciplinary action.

The alcohol and drug rule requires that the Town, as the employer, provide the employee with an opportunity for treatment and refer the employee to a substance abuse professional. The ruling does not, however, require the Town to hold a job open for the employee or to pay for rehabilitation. If an employee violates an alcohol or drug prohibition he or she must be evaluated by a substance abuse professional to determine what help is needed. Payment of recommended programs may be covered by the employee's health insurance according to the terms set forth in the medical insurance health agreement. The cost of treatment not covered by insurance, all deductibles and co-payments, are the responsibility of the employee. If an employee would like further information on alcohol or drug issues, he or she may do so on a confidential basis through the Town's Employee Assistance Program at 800-451-1834.

### Disciplinary Actions

Any employee of the Town of Leverett who has a positive "confirmation test" for alcohol or for drugs shall be subject to disciplinary action as outlined below:

For a positive Random, Reasonable Suspicion, or Return to Duty and Follow-up test:

- First positive: Five (5) day suspension without pay or cleared for return to safety sensitive functions, whichever is longer (Introductory employees will be terminated);
- Second positive within 24 months: Twenty (20) day suspension without pay or cleared for return to safety sensitive functions, whichever is longer;
- Third positive within 24 months of first positive: Termination.

For a positive Post Accident test:

First positive: Twenty (20) day suspension without pay or cleared for return to safety sensitive functions, whichever is longer;  
Second positive within 24 months: Termination.

For a positive Pre-Employment test (includes promotion to a safety sensitive position):

First positive: Action cancelled, no appointment to position.

Any employee who refuses to submit to testing or attempts to adulterate a specimen will be terminated.

## **9. SEVERABILITY**

Each provision of the Town of Leverett Personnel Policies shall be construed as separate to the extent that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.