



**Board Policy No. 296**

**Personnel Policies for Unrepresented Employees**

**ADOPTED:** 02/26/2014

**RECENT AMENDMENT:** 10/04/2017

**SEE ALSO:** N/A

**SUBJECT CATEGORY:** SECTION 200, HUMAN RESOURCES

**SUBSECTION:** UNREPRESENTED EMPLOYEES

**CONTROL DEPARTMENT:** HUMAN RESOURCES

**PERSONNEL POLICIES FOR  
UNREPRESENTED DISTRICT EMPLOYEES  
LAST AMENDED BY Resolution No 17-044**

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## I. PURPOSE

The purpose of this Policy is to consolidate the policies and procedures that apply to the employment of unrepresented District employees

## II. POLICY

### ARTICLE 1. EMPLOYEE CATEGORIES<sup>1</sup>

Section 1.1	Categories of Employees
Section 1.2	Applicability to Part-Time/Temporary/Probationary Employees/Limited Term/At-Will Employees
Section 1.3	Exempt/Non-Exempt Employees

#### SECTION 1.1 CATEGORIES OF EMPLOYEES

The following categories of unrepresented employees are hereby established:

- A. **Regular Employee:** An employee who has successfully completed the probationary period and is a holder of a regular position established by the Board of Directors.
  - 1. **Full-time Regular:** A regular employee who is assigned and scheduled to work at least 2,080 hours during each consecutive twelve (12) month period.
  - 2. **Part-time Regular:** A regular employee who is assigned and scheduled to work under 40 hours per week (equivalent to less than 2,080 hours in any consecutive twelve (12) month period).
    - a. **Compensation** shall be as established by the Board of Directors prorated to an hourly rate using 2,080 hours in any consecutive twelve (12) month period to establish the prorated compensation.
    - b. **Benefits** including but not limited to health, welfare, vacation, and sick leave for employees in this category shall be provided as set forth herein. Pension benefits are not provided.
- B. **Probationary:** An employee who is assigned to work a regular position but who has not completed the probationary period established by this Policy. Probationary employees may be released at any time during probation in accordance with District Policy and practice.
- C. **At-Will Employee:** Any executive or chief level executive hired or promoted after November 4, 2015; any employee hired after September 27, 2017 to a position designated in Article 16 of this policy; any employee hired on or before September 27, 2017 who is promoted into an executive or chief level executive position; or any employee hired after September 27, 2017 hired for or promoted into a new or amended classification specification deemed at will and adopted by the

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1 Replacing Board Policy No. 296 – Employee Categories

Board of Directors after September 27, 2017. At-will employees do not serve probationary periods.

- D. Temporary: An employee who is assigned and scheduled to fill a temporary position or who is appointed to fill a regular position for a limited period of time. An employee's assignment in this capacity may be on a full-time, part-time, seasonal, intermittent, or other basis. The employee may be simultaneously or consecutively assigned to a single or series of positions.
1. Compensation shall be as established by the Board of Directors prorated to an hourly rate using 2,080 hours in any consecutive twelve (12) month period to establish the prorated compensation.
  2. Benefits including but not limited to health, welfare, vacation, pension, and sick leave shall not be provided by the District.
- E. Limited Term: An employee who is assigned and scheduled to fill a regular position for a limited period of time, usually as the result of grant funding for such position and/or the creation of the position to support a particular project. An employee's assignment in this capacity will terminate upon the expiration of the grant funding and/or the project. Employees in this category will be advised of their limited term status upon hiring.

#### **SECTION 1.2 APPLICABILITY TO PART-TIME/TEMPORARY/PROBATIONARY/LIMITED TERM/AT-WILL EMPLOYEES**

- A. All provisions of this Policy are applicable to part-time regular employees with the exception of those determined by the District to be inconsistent with their part-time status or the provisions of this Policy.
- B. All provisions of this Policy are applicable to temporary employees with the exception of those determined by the District to be inconsistent with either their at-will status or the provisions of this Policy.
- C. All provisions of this Policy are applicable to probationary employees with the exception of those determined by the District to be inconsistent with their probationary status or the provisions of this Policy.
- D. All provisions of this Policy are applicable to limited term employees with the exception of those determined by the District to be inconsistent with their limited term status or the provisions of this Policy.
- E. All provisions of this Policy are applicable to at-will employees except Articles 2 (compensation), 6 (vacation), 9 (sick leave), 11 (layoffs), 12 (discharge, discipline and appeals) and 13 (probation), Section 4.11 (sick leave rollover), and those provisions determined by the District to be inconsistent with their at-will status or the provisions of this Policy.

**SECTION 1.3 EXEMPT/NON-EXEMPT EMPLOYEES**

- A. An exempt employee is one who is exempt from the overtime provisions of the federal Fair Labor Standards Act (“FLSA”).
- B. A non-exempt employee is one who is subject to the overtime provisions of the FLSA.

## ARTICLE 2. COMPENSATION<sup>2</sup>

Section 2.1	Salary Grades <sup>3</sup>
Section 2.2	Initial Hire Rates
Section 2.3	Salary Step Advances
Section 2.4	Maintenance of Differentials
Section 2.5	Acting Appointments
Section 2.6	Promotions
Section 2.7	Extenuating Circumstances
Section 2.8	Project Pay
Section 2.9	Overtime <sup>4</sup>

### **SECTION 2.1 SALARY GRADES**

The salary structure for unrepresented classifications shall be comprised of seven (7) steps with three percent (3%) between each step, which shall be subject to change from time to time in accordance with District policies, practice and labor market considerations.

### **SECTION 2.2 INITIAL HIRE RATES**

Initial hire rates of pay shall be determined based on the qualifications and experience a candidate brings to the position within the classification.

### **SECTION 2.3 SALARY STEP ADVANCES<sup>5</sup>**

A salary step advancement may be granted to employees who continue to demonstrate acceptable job performance after completion of one year of service in the former step until said employees reach the top step of the salary grade schedule.

A salary step advancement may be postponed for an employee who has not demonstrated acceptable performance. The employee shall not be entitled to a salary step increase until such time as his/her performance is deemed acceptable. After demonstration of acceptable performance, the employee's supervisor is responsible for determining the effective date of the step increase in coordination with the Human Resources Department. That date shall become the employee's new salary anniversary date.

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2 Replacing Board Policy No. 240 – Management Compensation; and in relevant part Resolution No. 1109, 09/99

3 Replacing in relevant part Resolution No. 1034, 02/98

4 Replacing in relevant part Resolution No. 11-034, 07/11

5 Salary Step Advances were suspended on June 23, 2010, as a result of Resolution No. 10-037 and reinstated on July 27, 2011, as a result of Resolution No. 11-034



A salary step increase shall be denied if an employee has been placed on performance review. If the employee has successfully completed the performance review, the employee will be entitled to a non-retroactive step increase, which shall become effective on the date the employee is no longer on performance review. That date shall become the employee's new salary anniversary date.

#### **SECTION 2.4 MAINTENANCE OF DIFFERENTIALS**

The General Manager may authorize salary adjustments in order to maintain appropriate supervisory salary differentials.

Except as noted below, a maximum differential of five percent (5%) may be paid to supervisors/managers over the base salary of their highest paid direct report.

For determination of a Transportation Superintendent differential, the highest paid direct report shall be defined as the highest paid incumbent in the Assistant Transportation Superintendent classification.

With respect to the Maintenance Superintendent a minimum differential of 2.5% may be paid over the base salary of their highest paid direct report in the Senior Maintenance Supervisor classification.

#### **SECTION 2.5 ACTING APPOINTMENTS**

An acting assignment is the temporary appointment made from within the District to another classification generally for backfill purposes up to six (6) months. The appointed person must meet the minimum qualifications, except in exigent circumstances, and be capable of performing the essential functions of the position without training or additional supervision. The General Manager shall develop and maintain an Administrative Regulation implementing a process for making acting appointments. A maximum adjustment of five percent (5%) shall be provided for individual employees designated by the District to act in higher level assignments for a period in excess of thirty (30) calendar days.

#### **SECTION 2.6 PROMOTIONS**

Employees promoted to a higher level classification shall be placed on at least the first step of the new salary grade, or at minimum the step that provides for at least a 4.75% salary increase.

#### **SECTION 2.7 EXTENUATING CIRCUMSTANCES**

When necessary and appropriate, and in coordination with the Executive Director of Human Resources, the General Manager may authorize individual step movements within salary grades provided such movements are within the minimum and maximum ranges of the Board adopted grade and step system.

**SECTION 2.8 PROJECT PAY**

Project Pay may be granted by the written authorization of the General Manager, in consultation with the Executive Director of Human Resources, to compensate an employee for additional project-based work of significant complexity and importance to the District. Such work is typically outside the employee's job description and performed on a limited term basis generally no longer than one (1) year. Project Pay is discretionary and may be no more than 10% of the employee's base pay. The Executive Director of Human Resources shall ensure that Project Pay is reviewed periodically and terminated upon completion of the identified project.

**SECTION 2.9 OVERTIME**

Notwithstanding any other provision of this Policy, non-exempt employees are entitled to be paid overtime in accordance with the FLSA following completion of forty (40) hours of actual work in one week.

Overtime must be authorized in advance in writing by the employee's supervisor or performed in accordance with pre-approved departmental procedures based on identified operational needs.

Overtime is paid at time and one half the non-exempt employee's applicable FLSA rate.

### ARTICLE 3. EMPLOYEE BENEFITS<sup>6</sup>

Section 3.1	Health Benefits
Section 3.2	Dental Plan <sup>7</sup>
Section 3.3	Vision Care <sup>8</sup>
Section 3.4	Opt Out <sup>9</sup>
Section 3.5	Flexible Spending Plan
Section 3.6	Domestic Partners
Section 3.7	Part-Time Employee Benefits
Section 3.8	District Provided Insurance <sup>10</sup>
Section 3.9	Supplemental Insurance

#### SECTION 3.1 HEALTH BENEFITS

The District provides medical, dental, and vision plan(s) for full-time regular, probationary, temporary direct hire, and limited-term unrepresented employees and their eligible dependents. In addition, the District provides single-level medical, dental and vision plan(s) for part-time regular unrepresented employees.

Until further notice the District shall pay 90% of the cost of the monthly medical and dental plan premiums and the employee shall pay 10% of the cost of the monthly medical and dental plan premiums by way of payroll deduction.

Employees on a leave status will be required to make their 10% contribution of the premium while in such status through payroll deductions or other direct payment for up to six (6) months, with the exception of industrial injury leaves of absence which last up to twelve (12) months. After the initial six (6) months or twelve (12) months for industrial leaves of absence, an employee may choose to continue coverage through COBRA. Failure to submit the 10% contribution while on leave will result in cancellation of benefit coverage and/or issuance of a COBRA notice in accordance with applicable law and lawful District practice

The District's medical plans provide for certain co-payments. Employees should refer to the most recent Medical Plan document and/or summary for a full disclosure of all required co-payments.

#### SECTION 3.2 DENTAL PLAN

Until further notice, the Dental Plan will include four annual dental cleanings payable at 100% usual and customary, with other basic and major services payable at 90%. The annual maximum dental

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6 Replacing in relevant parts Resolution No. 1034, 02/98 and Resolution No. 11-034, 07/11

7 Replacing in relevant parts Resolution No. 2020, 08/01 and Resolution No. 06-033, 08/06

8 Replacing in relevant part Resolution No. 09-014, 02/09

9 Replacing in relevant part Resolution No. 2104, 09/03

10 Replacing Board Policy – Long Term Disability; and in relevant parts Resolution No. 1034, 02/98 and Resolution No 1109, 09/99

limit is \$3,000.00 per eligible beneficiary. The maximum deductible is \$50 per individual, with a maximum of three deductibles per family unit. The orthodontia benefit is payable at 50%, with a lifetime maximum of \$4,000.00 per eligible beneficiary.

### SECTION 3.3 VISION CARE

Until further notice, the Vision Plan for employees and eligible dependents will include an eye examination and a lens and frame allowance of \$200 annually.

### SECTION 3.4 OPT OUT

Subject to the District's compliance with federal healthcare reform, and until further notice, employees who Opt out of medical or dental coverage shall receive each month the opt out payment set out below:

Medical:

Single to zero -	\$100
Double to zero -	\$200
Family to zero -	\$300

Dental:

Single to zero -	\$10
Double to zero -	\$20
Family to zero -	\$30

### SECTION 3.5 FLEXIBLE SPENDING PLAN

The District offers a flexible spending plan (IRS Section 125 plan), which includes benefits permitted by the Internal Revenue Code Section 125

### SECTION 3.6 DOMESTIC PARTNERS

An employee's domestic partner, and qualifying dependents of the domestic partnership, shall be eligible for health/dental/vision benefits. In order to receive domestic partnership benefits the couple must provide to the District a signed copy of their Declaration of Domestic Partnership<sup>11</sup> filed with the State of California or a sworn affidavit that attests both individuals meet all of the following criteria:

- A. Are 18 years of age or older;
- B. Are competent to enter into a contract;

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11 Secretary of State Form NP/SF DP-1

- C. Are not legally married to, or the domestic partner of, any other person;
- D. Are not related by marriage;
- E. Are not related by blood closer than permitted under marriage laws of the State of California;
- F. Have entered into the domestic partner relationship voluntarily, willingly, and without reservation;
- G. Have entered into a relationship which is the functional equivalent of a marriage, and which includes all of the following:
  - 1. living together as a couple;
  - 2. mutual support of each other;
  - 3. mutual caring and commitment to each other;
  - 4. mutual fidelity;
  - 5. mutual responsibility for each other's welfare; and
  - 6. joint responsibility for the necessities of life.
- H. Have been living together as a couple for at least six (6) months prior to registration with the District;
- I. Intend to continue the domestic partner relationship indefinitely, with the understanding that the relationship is terminable at the will of either partner.

A domestic partnership terminates when one or both domestic partners:

- 1. Files a Notice of Termination of Domestic Partnership<sup>12</sup> with the State of California;
- 2. No longer meet the above qualification;
- 3. Gives notice that the relationship has been dissolved; or
- 4. Dies.

### **SECTION 3.7 PART-TIME EMPLOYEE BENEFITS**

- A. Health & Welfare Benefits: Part-time employees are eligible for the following single level District paid benefits effective the first of the month following thirty (30) days of employment:
  - 1. Medical
  - 2. Dental
  - 3. Vision
  - 4. Basic Life Insurance and AD&D

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12 Secretary of State Form NP/SF DP-2

The part-time employee is responsible for 10% of the monthly premiums for his/her individual medical and dental benefits. Part-time employees will be allowed to add medical coverage for dependents, the full cost of which will be covered by the employees through payroll deduction.

Retirees: Part-time employees who are also District retirees enrolled in District retiree health benefit plans will remain in retiree health benefit plans. Their life insurance benefit will be based upon the active group (2x annual salary).

- B. Pension/Retirement Plans Part-time employees are not entitled to participate in the District's retirement plans. All questions of eligibility are resolved by the Retirement Board.
- C. Paid Time Off Vacation, sick leave, and holidays will accrue for part-time employees at a rate of four (4) hours vs. eight hours (8) for full-time employees.
- D. Service Time Except for layoff, service as a part-time employee shall not count as service time for any purposes. Upon conversion of an employee to full time status, accrued benefits or credit toward benefits shall be carried forward.

### **SECTION 3.8 DISTRICT PROVIDED INSURANCE**

At no cost to the employee, subject to change from time to time, the District provides the following insurance to full-time regular, part-time regular and limited-term unrepresented employees:

- A. Basic Life Insurance in the amount of two times annual salary, rounded to the nearest \$5,000.
- B. Long Term Disability Insurance that provides, if the employee is eligible, coverage at the level of 50% of base salary to a maximum of \$15,000 per month. There is a waiting period of 180 days.
- C. Accidental Death and Dismemberment Insurance in the amount of \$15,000.

### **SECTION 3.9 SUPPLEMENTAL INSURANCE**

Full-time regular, limited-term regular and probationary unrepresented employees may purchase additional supplemental life insurance and long-term disability insurance.

**ARTICLE 4. PENSION AND DEFERRED COMPENSATION**<sup>13</sup>

Section 4.1	Pension Benefits
Section 4.2	Pension Vesting
Section 4.3	Term Vested Employees
Section 4.4	Three Highest Years
Section 4.5	Benefit Formula –Tier One Plan <sup>14</sup>
Section 4.6	Benefit Formula – Tier Two Plan
Section 4.7	Partial Years
Section 4.8	Pop-Up
Section 4.9	Pre-Retirement Death Benefits
Section 4.10	Occupational Disability Retirement Benefits
Section 4.11	Deferred Compensation <sup>15</sup>
Section 4.12	Sick Leave Rollover <sup>16</sup>

**SECTION 4.1 PENSION BENEFITS**

All retirement benefits for full-time regular unrepresented employees shall be in accordance with the AC Transit Retirement Plan and amendments as approved by the AC Transit Board of Directors. As between these policies, any summary plan description, and/or any other documents, the AC Transit Retirement Plan document as amended shall be controlling.

**SECTION 4.2 PENSION VESTING**

Vesting requirement for unrepresented employees is currently five (5) years.

**SECTION 4.3 TERM VESTED EMPLOYEES**

Unrepresented employees who left employment with the District after July 1, 1998, but before January 2, 2007, and who were vested, shall be eligible to receive pension benefits starting at age 55.

**SECTION 4.4 THREE HIGHEST YEARS**

Retirement benefits will be determined by the monthly average of the highest three (3) years of salary or the last 36 months of employment, whichever is higher.

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13 Replacing Board Policy – Pension/Deferred Comp; and in relevant part Resolution No. 1034, 02/98

14 Replacing in relevant parts Resolution No. 2020, 08/01 and Resolution No. 06-033, 08/06

15 Replacing in relevant parts Resolution No. 1109, 09/99 and Resolution No. 09-014, 02/09

16 Replacing in relevant part Resolution No. 2020, 08/01

**SECTION 4.5 BENEFIT FORMULA – TIER ONE PLAN**

For employees hired before January 1, 2016, regular retirement benefits will be based on the formula outlined below. This formula will be used for the time period immediately preceding retirement that an employee has been continuously employed as an unrepresented employee since July 1, 1994.

This retirement formula will also apply to eligible Term Vested employees who are employed after June 21, 2006 and who retire after January 1, 2007. (Term Vested employees are those who are vested in the Retirement Plan, but who left District service before reaching retirement eligibility based on one's age at that time.)

2.00% at age 50  
2.15% at age 51  
2.30% at age 52  
2.45% at age 53  
2.60% at age 54  
2.75% at age 55

Regular retirement benefits will be calculated based on the formula below for any years of service prior to July 1, 1994. This formula will also be used for the years of service after July 1, 1994 but prior to the employee becoming an unrepresented employee with no break in unrepresented status. This paragraph will not apply to an employee whose status changed to unrepresented on or after January 1, 2016. (Please see the retirement plan for further information.)

2.0% at age 50  
2.1% at age 51  
2.2% at age 52  
2.3% at age 53  
2.4% at age 54  
2.5% at age 55

**SECTION 4.6 BENEFIT FORMULA – TIER TWO PLAN**

Employees hired on or after January 1, 2016 are subject to the Plan Amendment in development and pending review by the Board of Directors.

**SECTION 4.7 PARTIAL YEARS**

Retirement formula shall include partial year service for additional months worked on a pro rata basis.



**SECTION 4.8 POP-UP**

A “pop-up” option shall be available for employees choosing a survivor benefit, if survivor predeceases the retiree.

**SECTION 4.9 PRE-RETIREMENT DEATH BENEFITS**

If a participant dies prior to retirement, regardless of age at the time of death, no death benefit shall be payable unless the participant: (i) was eligible to elect to receive a retirement benefit on the date of death; or (ii) had at least ten (10) years of service on the date of death and had a spouse or previously designated domestic partner or an eligible child on the date of death. The preretirement death benefit currently provided for in the Retirement Plan shall be payable to a participant’s spouse or previously designated domestic partner, or if there is no spouse, to an eligible child.

For the purposes of this section, an eligible child shall be defined as an unmarried child up to the age of 19. Eligibility shall continue from the age of 19 through the age of 24 for a child who is enrolled as a full-time student in an accredited school and is unmarried. A full-time student is one taking at least twelve semester units (or equivalent hours) in a qualified college, university, or vocational school.

**SECTION 4.10 OCCUPATIONAL DISABILITY RETIREMENT BENEFITS**

Occupational disability retirement benefits otherwise payable to eligible unrepresented employees who becomes entitled to an Occupational Disability Retirement Benefit shall be reduced by the amount of any payment received by such individual through any workers’ compensation program, excluding any such payment determined without reference to such Participant’s earnings as an employee.

**SECTION 4.11 DEFERRED COMPENSATION**

The District shall contribute \$69.23 per pay period (\$1,800 annually) to the 457 Deferred Compensation account for each full-time regular and probationary unrepresented employee who is in a paid (regular or leave) status for at least 50% of a pay period.

**SECTION 4.12 SICK LEAVE ROLLOVER**

Employees shall be allowed to make a sick leave rollover to deferred comp per the following formula:

If the employee has this number of sick days accrued:	Employee may convert up to this # of sick days to deferred comp:
10 days	2 days
25 days	5 days

50 days	20 days
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NOTE: Sick leave rollover into deferred comp is not pensionable income.

- Note that at-will employees do not accrue sick leave and this provision is not applicable to them.

**ARTICLE 5. RETIREE BENEFITS**<sup>17</sup>

Section 5.1	Medical/Dental/Vision for Retirees <sup>18</sup>
Section 5.2	Dependent Medical/Dental/Vision for Retirees
Section 5.3	Alternate Medical Coverage
Section 5.4	Opt-Out
Section 5.5	Medicare
Section 5.6	Life Insurance <sup>19</sup>
Section 5.7	Transfer or Promotion
Section 5.8	Direct Pay Option

**SECTION 5.1 MEDICAL/DENTAL/VISION FOR RETIREES**

Unrepresented employees who retire directly from the District (i.e. service retirement, not term vested separation from service or term vested retirement) are entitled to the following benefits upon retirement.<sup>20</sup>

- A. Paid dental and vision coverage for the retiree only enrolled in the District's dental and vision plan.
- B. For employees who retire with 10 or more years of service, paid medical coverage for the retiree only enrolled in one of the District's medical plans. District will pay full cost of lowest plan available, and retiree will pay the difference if enrolled in a higher cost plan.

For employees who retire with fewer than 10 years of service, medical insurance coverage will be prorated, as described below:

Fifty percent of premium is paid by the District for five years of service, with increments of 10% added for each additional year up to 10 years of service. For example, the District will pay 70% of the lowest cost Medicare or non-Medicare plan rate for a retiree with 7 years of service.

- C. Hearing aids are included in retiree only coverage.

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17 Replacing Administrative Regulation No. 239 – Benefits; and in relevant part Resolution No. 1034, 02/98

18 Replacing in relevant part Resolution No. 2020, 08/01

19 Replacing in relevant part Resolution No. 09-014, 02/09

20 In other words, for purposes of these benefits one must have both age and length of service, be a participant in group benefit plans at the time one leaves District service, simultaneously applying for and beginning to receive retirement benefits. Term Vested employees are not eligible.

**SECTION 5.2 DEPENDENT MEDICAL/DENTAL/VISION FOR RETIREES**

Dependent eligibility is determined by the District. For details, please refer to the AC Transit Employee Benefits Handbook.

- A. Effective September 1, 2006, dependent medical coverage was provided, subject to a \$100 per month contribution by the retiree and/or dependent(s) for unrepresented employees retiring directly from the District on or after September 1, 2006.
  - 1. New dependents may be added within the first thirty days following qualifying events (e.g. marriage).
  - 2. Dependents may elect to continue coverage under the District's health plans, after retiree's death, subject to dependent eligibility criteria.
  - 3. Dependents of an unrepresented employee who dies while on the active employee rolls, and who is vested and age eligible for retirement, may elect to continue coverage under the District's health plans, subject to eligibility criteria.
- B. The retiree may purchase dependent vision and dental coverage at a rate established by the District.

**SECTION 5.3 ALTERNATE MEDICAL COVERAGE**

Unrepresented employees who retire and who subscribe to alternate medical coverage outside of AC Transit, in lieu of a District health plan, will receive monetary reimbursement as follows:

Reimbursement of medical premiums shall be based upon the equivalent of the District's lowest HMO rate or lowest HMO Medicare rate (whichever is applicable).

For out of area retirees, reimbursement will be based upon the lowest cost District plan, subject to proof of payment. Reimbursement will be made on a quarterly basis.

**SECTION 5.4 OPT-OUT**

If District medical coverage is waived, and the retiree is in a no cost or low cost plan (e.g. military, spousal plan, prior employer), then the retiree may opt out and be entitled to \$100.00 per month. There will be no opt-out payment for dependent(s).

**SECTION 5.5 MEDICARE**

Medical contribution for retirees and spouses with Medicare Parts A & B is as follows:

Retiree:	\$40
Retiree and spouse:	\$80

**SECTION 5.6 LIFE INSURANCE**

Retiree life insurance in the amount of \$25,000 per retiree is provided for unrepresented employees who retired directly from the District on or before February 28, 2009 and \$50,000 per retiree for those retiring directly from the District on or after March 1, 2009.

**SECTION 5.7 TRANSFER OR PROMOTION**

Employees who transfer or are promoted into an unrepresented employee position must remain in the unrepresented position for at least one year in order to receive unrepresented employee retiree medical benefits. Exceptions are to be made only at the discretion of the General Manager and must be in writing.

**SECTION 5.8 DIRECT PAY OPTION**

Employees who terminate service with at least 15 years of service and who are at least 50 years old may elect to remain with the District benefit plan on Direct Pay Status. Employee is entitled to convert to Direct Pay retiree medical benefits at age 55.

**ARTICLE 6. VACATION**<sup>21</sup>

Section 6.1	Vacation Credits	<sup>22</sup>
Section 6.2	Accrual of Vacation Credits	
Section 6.3	Use of Vacation Credits	
Section 6.4	Maximum Accrual	<sup>23</sup>
Section 6.5	Holidays	
Section 6.6	Scheduling	
Section 6.7	Partial Day Absence	
Section 6.8	Payment Upon Separation	
Section 6.9	Vacation Pay Advance Due to Financial Hardship	

**SECTION 6.1 VACATION CREDITS**

It is the policy of the District to grant vacation to unrepresented employees on an earned basis as follows:

- Employees with less than one year's service will earn vacation credits on a prorated basis.
- Employees with one, but less than five years of service shall earn 80 hours of vacation each year.
- Employees with five, but less than ten years of service shall earn 120 hours of vacation each year.
- Employees with 10, but less than 15 years of service shall earn 160 hours of vacation each year.
- Employees with 15, but less than 25 years of service shall earn 200 hours of vacation each year.
- Employees with 25 years or more of service shall earn 240 hours of vacation each year.

**SECTION 6.2 ACCRUAL OF VACATION CREDITS**

For each month, or major fraction thereof, of continuous service an employee shall earn one-twelfth of the annual vacation credits he/she is eligible to accrue. Vacation credit accruals are based on the number of years of service and total hours earned.

The accumulation of vacation credits shall not be affected by absences of one year or less due to industrial injury or illness. A maximum of 720 hours shall be allowed for illness or non-occupational injury without forfeiture of vacation credits. Leaves of absence whether continuous or not, which total 176 hours or less during any calendar year shall not result in the forfeiture of vacation credits.

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21 Replacing Board Policy No. 280 - Vacation and Administrative Regulation No. 280 - Vacation

22 Replacing in relevant part Resolution No. 2020, 08/01

23 Replacing in relevant part Resolution No. 2104, 09/03

**SECTION 6.3 USE OF VACATION CREDITS**

Vacation credit can only be used in increments of one or more full half hours. Day-at-a-time vacation may be granted at the discretion of the department manager or supervisor. Employees requesting day-at-a-time vacation should submit their requests to their immediate supervisors at least 24 hours in advance. For employees with an alternate work schedule, the number of vacation hours charged for each absence will be the same as the number of scheduled work of hours missed. For the purpose of computing leave only, current accrual practices which equate one (1) workday to eight (8) hours regardless of employee's work schedule will be maintained.

**SECTION 6.4 MAXIMUM ACCRUAL**

Except as otherwise provided herein, Vacation is limited to no more than 240 hours. An employee will cease accruing vacation hours if he/she has reached the 240 hour cap on accrual. The employee will begin accruing vacation again after his or her vacation hours fall below the 240 cap, i.e., through vacation usage or partial "cash out" as may be authorized by the District.

Employees who had more than 240 hours vested as of December 31, 1988, will not forfeit the excess. However, they will not vest any additional vacation hours in excess of the number on record as of December 31, 1988. Any pre-1994 "frozen" vacation hours must be held until retirement. Hours held until retirement will be paid at their July 1, 2003 value.

Employees are responsible for monitoring their vacation accrual to ensure they do not exceed the maximum carry-over rate. Supervisors and managers should also monitor their employee's vacation accrual, and approve vacation time off requests as operationally feasible to ensure that employees do not exceed the maximum cap. Only in extraordinary cases where there are justifiable personal reasons or critical business needs may an exception be granted. Exceptions require the prior written concurrence of the department manager and the approval of the responsible Executive Staff member for the employee's department.

**SECTION 6.5 HOLIDAYS**

A District-observed regular holiday occurring during an employee's vacation will be counted as a holiday in lieu of vacation or any other paid time off.

**SECTION 6.6 SCHEDULING**

Supervisors and department managers are responsible for approving, controlling, and adjusting vacations for their respective departments as necessary to ensure operational continuity. Supervisors should consider availability of leave time prior to granting vacation requests.

**SECTION 6.7 PARTIAL DAY ABSENCE**

Any employee who works part of a day and is absent the remainder of the same day shall be required to charge such time against available sick leave, vacation, management leave, or historical compensatory time off (CTO) credits.

If sufficient leave credits are not available in any one or a combination of applicable categories, the employee's pay will be reduced to account for the partial day absence.

For any employee who is exempt from the overtime provisions of the FLSA, charges against available leave credits for partial-day absences shall not be required in those circumstances where the employee has prior supervisory approval, and has actually worked, or is scheduled to work, an equivalent number of extra hours within the same pay period.

**SECTION 6.8 PAYMENT UPON SEPARATION**

Vested and accrued vacation time and any historical CTO credits will be paid at the time of voluntary or involuntary separation.

**SECTION 6.9 VACATION PAY CASH-OUT DUE TO FINANCIAL HARDSHIP**

The District permits vacation cash-outs for reasons of personal "hardship" subject to prior approval by the District's Chief Financial Officer (CFO). In Order to protect all employees from incurring a tax liability related to Internal Revenue Service Letter Ruling 90-09052,<sup>24</sup> any unrepresented employee requesting a payout of accrued unused vacation due to financial hardship is required to complete the District's approved form for this purpose. The form, when completed will be considered confidential and will be reviewed only by the Chief Financial Officer (CFO) and other employees with a need to know.

Upon approval of the application, the CFO will notify the payroll Supervisor to process the payout.

In the event that the District's vacation plan is modified to allow vacation cash-outs on a limited basis, for purposes other than "hardship," such cash-out shall be like-wise extended to unrepresented employees.

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24 Internal Revenue Service Letter Ruling 90-09052 concludes that annual leave is taxable to an employee in the year of accrual if the employee has a right to request cash in exchange for the accrued leave. This income is subject to income tax and FICA withholding even if not paid in the current fiscal year.



**ARTICLE 7. HOLIDAYS**<sup>25</sup>

Section 7.1	Observed Holidays	<sup>26</sup>
Section 7.2	Alternative Holidays	
Section 7.3	Other Holiday Credits	
Section 7.4	Usage of Holiday Credits	
Section 7.5	Usage of Excess Holiday Credits	

**SECTION 7.1 OBSERVED HOLIDAYS**

It is the policy of the District to grant unrepresented employees paid holidays as outlined below:

<b>Regular Holiday</b>	<b>Observed</b>
New Year's Day	January 1
Martin Luther King, Jr. Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Fourth Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving	Fourth Thursday in November
Christmas	December 25

**SECTION 7.2 ALTERNATIVE HOLIDAYS**

If a regular holiday falls on Sunday, Monday shall be considered the regular holiday. If a regular holiday falls on Saturday, or on an employee's regular day off, the employee will be given, at the District's option, an eight (8) hour holiday credit or eight (8) hours pay for the holiday.

**SECTION 7.3 OTHER HOLIDAY CREDITS**

- One (1) eight-hour birthday holiday credit per calendar year.
- Two (2) eight-hour floating holiday credits per fiscal year.

The birthday holiday credit is accrued annually on the employee's birthday. An employee who is on the payroll as of the date of his/her birthday will be granted an eight hour birthday holiday credit for that year.

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25 Replacing Board Policy No. 266 - Holidays; Administrative Regulation No. 266 – Holidays; and in relevant part Resolution No. 2020, 08/01

26 Replacing in relevant part Resolution No. 11-034, 07/11

The floating holiday credits are accrued on a fiscal year basis (July 1 through June 30). Employees on the payroll on June 30 will be granted floating holiday credits for the next fiscal year beginning July 1.

General Office employees who are scheduled to work both Christmas Eve and New Year's Eve may take one half day off on both days where operationally feasible. Department managers must ensure adequate coverage for the department.

Employees who are on scheduled vacation on Christmas and New Year's Eve are entitled to four (4) hours of vacation pay and four (4) hours of regular pay.

#### **SECTION 7.4 USAGE OF HOLIDAY CREDITS**

All holiday credits must be used within one year of being granted. They cannot be accumulated.

Holiday credits may be used at the employee's discretion with prior supervisory approval. The department manager or supervisor will ensure that the operational continuity of his/her department or section is not disrupted by employees using holiday credits.

Holiday credits are earned at eight (8) hours for full-time employees regardless of employee's work schedule. Holiday credits can only be used in full eight-hour increments.

When an employee is on a sick leave or industrial injury/illness leave in excess of six (6) consecutive calendar months, holiday pay provisions will not apply.

#### **SECTION 7.5 USAGE OF EXCESS HOLIDAY CREDITS**

As of July 1, 2012, the following will occur:

Holiday credits for all employees will be reset as follows:

Floating Holidays	16 hours
Birthday Holiday	8 hours
Banked Holidays	0 hours

The excess holiday credits for each employee in any of these three categories will be transferred to a new holiday credit account called Historical Holiday.

The District will begin strict enforcement of this provision requiring all holiday credits to be used within one year of being granted. Any holiday credit(s) - except Historical Holiday credits - not used within one year of being granted will be forfeited by the employee.

Historical Holiday credits are available for use by employees immediately after July 1, 2012, under the same scheduling and approval conditions as floating and birthday holidays are currently scheduled.

Employees will be given until December 31, 2014 to exhaust their Historical Holiday credits but are encouraged to use any available credits as soon as possible.

To ensure an orderly reduction in the Historical Holiday credits the following schedule establishes the maximum Historical Holiday credits allowed at the end of each six month period (the "burn rate"). Any Historical Holiday credit(s) in excess of the maximum permitted on the dates indicated below shall be forfeited by the employee.

<b>Date:</b>	<b>Maximum Historical Holiday Credits:</b>
December 31, 2012	300
June 30, 2013	225
December 31, 2013	150
June 30, 2014	75
December 31, 2014	0

It is the employee's responsibility to ensure that he/she uses the appropriate amount of Historical Holiday credits in each calendar quarter to ensure that his/her credits are not subject to forfeiture.

Employees will be advised of the balance of their Historical Holiday credits on their pay stubs or through some other regular method.

The District will advise all of its management employees of this provision and direct management personnel, including but not limited to those responsible for approving leave requests, to work with employees to ensure that employees are given adequate time off to exhaust their Historical Holiday credits in accordance with the burn rate schedule above.

The District recognizes that meeting the burn rate schedule may present a challenge for some long term employees who are also attempting to meet the usage requirements and limitation of other leave balance accounts.

Any difficulties in implementing the burn rate, including any impediments individual employees are facing with management staff in scheduling sufficient Historical Holiday hours to comply with the burn rate, may be discussed with the Executive Director of Human Resources, or designee.

After July 1, 2012, any employee who is not able to schedule a floating, birthday, or banked holiday during the 12-month period after the holiday was granted, despite his/her best efforts to

schedule the same, shall bring the matter to the Executive Director of Human Resources, or designee before any forfeiture of such hours is imposed.

If the Executive Director of Human Resources, or designee determines that the employee made every reasonable effort to schedule the holiday during the 12-month period but was impeded by the District then the employee shall be paid at his or her regular rate of pay for such holiday.

**ARTICLE 8. MANAGEMENT LEAVE**<sup>27</sup>

Section 8.1	Annual Credit
Section 8.2	Qualifications
Section 8.3	Implementation
Section 8.4	Acting and Temporary Assignments

**SECTION 8.1 ANNUAL CREDIT**

On an annual basis, all unrepresented employees, excluding regular part-time and temporary unrepresented employees, who are exempt from the overtime provisions of the FLSA and who are not on a performance improvement plan will receive five (5) days of Management Leave.

**SECTION 8.2 QUALIFICATIONS**

To qualify for Management Leave employees must have worked 1200 hours in the previous year (except for employees hired within the previous calendar year) and must have maintained satisfactory performance during the same period. Employees hired within the previous calendar year will earn Management Leave on a pro-rata basis provided they worked enough hours to earn a minimum of eight (8) hours of Management Leave.

**SECTION 8.3 IMPLEMENTATION**

- A. The five (5) days of Management Leave shall be granted on January 1 of each year.
- B. Management Leave must be used in the calendar year in which it is granted and may not be cashed out or carried forward to the following year.

**SECTION 8.4 ACTING AND TEMPORARY ASSIGNMENTS**

Unrepresented employees in Acting and Temporary assignments will receive benefits based upon their prior or underlying regular, positions. Exceptions may be made in the reasonable discretion of the General Manager.

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27 Replacing Board Policy – Management Leave

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Questions concerning interpretation of this Policy are to be referred to the General Counsel.

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**ARTICLE 9. SICK LEAVE**<sup>28</sup>

Section 9.1	Accrual
Section 9.2	Usage
Section 9.3	Qualifications
Section 9.4	Maximum Accrual
Section 9.5	Conversion to Personal Leave
Section 9.6	Payment Upon Retirement
Section 9.7	District Sick Leave Bank
Section 9.8	Industrial Injury <sup>29</sup>
Section 9.9	Modified Return to Work Program

**SECTION 9.1 ACCRUAL**

Accrual of sick leave, on a prorated basis, for unrepresented employees shall be as follows:

- A. 64 hours (8 days) per year for the first year of employment.
- B. 96 hours (12 days) per year after the first year of employment.

**SECTION 9.2 USAGE**

Sick leave is available for actual illness or injury of an employee, or for any other reason permitted by State or Federal law.

Accrued unused sick leave should be charged whenever an employee is absent from work due to illness or non-occupational injury. Upon the exhaustion of sick leave the employee must use his or her vacation and any other paid leave available in accordance with District leave management practices.

**SECTION 9.3 QUALIFICATIONS**

An employee must work 1200 hours in a year (except for employees hired within the previous calendar year) to accrue sick leave the following calendar year. In addition to hours actually worked, other paid leave (including vacation, holiday, military leave, jury duty, funeral leave, related training and education) will be counted as hours worked for purposes of this accrual process.

**SECTION 9.4 MAXIMUM ACCRUAL**

- A. Unused sick leave may be accrued to a maximum of 1120 hours (140 days).

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28 Replacing Board Policy No. 278 – Sick Leave; Administrative Regulation No. 278 – Sick Leave; and in relevant part Resolution No. 1109, 09-99

29 Replacing in relevant part Management Procedure 208

- B. Employees who have accrued sick leave in excess of 1120 hours on January 1 shall receive payment for 50 percent of the hours in excess of 1120.
- C. An employee who has accrued sick leave in excess of 1120 hours and not used any sick leave, paid or unpaid, during the previous calendar year shall receive an additional payment equivalent to 24 hours (3 days).
- D. An employee may elect to have the above payment(s) placed into his/her individual deferred compensation (457) account. Employees must make said election by January 15th of each year.

#### **SECTION 9.5 CONVERSION TO PERSONAL LEAVE**

Unrepresented employees covered by the overtime provisions of the FLSA (i.e. non-exempt employees) shall also be entitled to use sick leave under the following circumstances:

- A. Non-exempt employees who have twenty-five (25) or more accumulated sick leave days as of January 1st of each year shall be permitted to use two (2) days of sick leave as paid personal leave during that calendar year.
- B. Non-exempt employees who have fifty (50) or more accumulated sick leave days as of January 1st of each year shall be permitted to use four (4) days of sick leave as personal leave during that calendar year.
- C. Personal leave must be used in the year in which it is granted and may not be cashed in or carried forward to the following year. Unused personal leave will be reconverted back to sick leave.

#### **SECTION 9.6 PAYMENT UPON RETIREMENT**

An employee who service retires with accumulated sick leave will receive a lump sum payment of one hundred (100) percent of the unused sick leave.

#### **SECTION 9.7 DISTRICT SICK LEAVE BANK**

Unrepresented employees may donate to a District Sick Leave Bank consistent with sick leave donation practices applicable to other District employees.

#### **SECTION 9.8 INDUSTRIAL INJURY**

- A. Employees are responsible for reporting all on-the-job injuries to their Supervisor or Department Manager within 24 hours of occurrence and complete a "Report of Injury" form.
- B. The District has a Medical Provider Network (MPN) to treat work-related injuries. The MPN has been approved by the California Division of Workers' Compensation (DWC). Unless an

employee has properly pre-designated a physician or medical group prior to an injury, any new work-related injuries arising on or after December 15, 2010 will be treated by providers in the "AC Transit MPN." Employees, who have a pre-existing injury, may be required to change treatment to a provider in the MPN.

- C. Health and Welfare Benefits: The District will pay the cost of Health and Welfare benefits less the employee's contribution, for one year from the day of industrial injury or illness.
- D. Vacation Benefits: Accumulation of vacation credits will not be affected by absences of six months or less due to industrial injury.
- E. Length of Service: Length of service with the District will be considered unbroken while an employee is on industrial injury or illness. However, an employee may be terminated after one year from the date of industrial injury or illness if the employee cannot be reasonably accommodated or the employee is medically determined to be totally and permanently disabled.
- F. Holiday Benefits: An employee will be eligible for holiday pay if away from work due to an industrial injury or illness for up to six months.
- G. Integration: An employee on Industrial Injury leave may supplement state industrial injury payments up to his/her regular rate of pay with accrued CTO, vacation or sick leave, in that order, according to District procedures.
- H. An employee is entitled to pay at his/her applicable base rate of pay for the remainder of his/her assigned shift or work schedule.

## **SECTION 9.9 MODIFIED DUTY RETURN TO WORK PROGRAM**

The District has established a Modified Duty Return to Work Program whose purpose is to:

- Hasten and encourage the return to work of industrially injured and non-industrially injured or sick employees;
- Provide opportunities for injured employees to contribute to the District's service objectives; and
- Save the financial resources of the District.

This program will not result in replacement of employment opportunities within existing or new classifications.

Employees who return to work through the Return to Work Program will be paid their regular rate of pay.



Assignments within the Return to Work Program are typically limited to sixty (60) calendar days, but may be extended in appropriate circumstances. Assignments may be full or part-time and may be unilaterally discontinued by the District in the event of non-cooperation of the employee.

Employees who are released by their treating physician to modified duty must participate in the program unless otherwise precluded by law.

The cases of non-industrially injured and ill employees will be reviewed on a case-by-case basis for participation in the program.

**ARTICLE 10. MISCELLANEOUS LEAVES OF ABSENCE**

Section 10.1	Bereavement Leave <sup>30</sup>
Section 10.2	Other Leaves of Absence

**SECTION 10.1 BEREAVEMENT LEAVE**

Unrepresented employees may take up to five (5) consecutive days off with pay in the event of death of an immediate family member who is defined as the employee's spouse, previously designated domestic partner, children of either spouse, parents of either spouse, grandparents or great-grandparents of either spouse, or brother, sister, brother-in-law or sister-in-law of the employees. The leave days must be tied to the days of the funeral or memorial service.

**SECTION 10.2 OTHER LEAVES OF ABSENCE**

Unrepresented employees who take any of the following leaves shall be treated in the same manner as, and follow the same rules applicable to, District employees represented by AFSCME, Local 3916:

- Jury Duty/Witness Duty
- Military Leave
- Administrative Leave
- General Leave of Absence – including Family Medical Leave

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30 Replacing Board Policy No. 262 – Bereavement Leave; and in relevant parts Resolution No. 1034, 02/98 and Resolution No. 2020, 08/01

**ARTICLE 11. LAYOFFS**

Section 11.1	Layoff Defined
Section 11.2	Notice to the Employee
Section 11.3	Severance
Section 11.4	Benefits
Section 11.5	COBRA
Section 11.6	Layoff Status
Section 11.7	Benefits Upon Reemployment
Section 11.8	Out-Placement Services
Section 11.9	Alternatives to Layoff

**SECTION 11.1 LAYOFF DEFINED**

For purposed of this Policy a Layoff is defined as an involuntary termination of employment due to non-disciplinary reasons (e.g. lack of work or lack of funds).

**SECTION 11.2 NOTICE TO THE EMPLOYEE**

Any regular employee affected by the District's decision to eliminate his/her position for lack of work or lack of funds will be informed in writing at least thirty (30) calendar days in advance of the effective date of the Layoff. The notice shall also include the reason for the Layoff and alternatives to the Layoff, if any.

**SECTION 11.3 SEVERANCE**

In the event an employee is laid off, in addition to compensation for accrued and unused vacation and compensatory time off, the employee shall receive severance compensation based on one week's pay for each full year, or major fraction thereof, of service with the District.

**SECTION 11.4 BENEFITS**

The District will continue employer payments for health plan, dental plan, vision plan, and life insurance benefits, for up to three (3) months for an individual who is laid off provided that the employee does not become eligible for employer-paid or employer-subsidized health and welfare coverage through new full-time, regular employment. The employee is responsible for his/her share of the benefit costs. Failure to pay the employee share will result in termination of benefit coverage. The coverage provided will be the same as available to District employees in the group benefit plans. It is the responsibility of the individual to notify the District promptly of the individual's entitlement to coverage pursuant to other employment.

**SECTION 11.5 COBRA**

The laid off employee may elect to continue coverage under applicable District plans for the period of time established by COBRA law after completion of the above three (3) month continuation period by paying the full cost of coverage under the applicable enrolled group plan(s). The employee is responsible for his/her share of the benefit costs. Failure to pay the employee share will result in termination of benefit coverage.

**SECTION 11.6 LAYOFF STATUS**

Individuals on Layoff status shall not be considered District employees and shall not accrue any benefits, pension credits, vacation, or sick leave while on Layoff status.

**SECTION 11.7 BENEFITS UPON REEMPLOYMENT**

Upon reemployment from Layoff status under any of these provisions, or as a result of obtaining District employment through a competitive recruitment process, the affected individual shall regain his/her seniority date; resume accrual of sick leave credits on a pro rata basis for the remainder of that calendar year; and receive full restoration of all earned, unused sick leave on the books at time of Layoff including credits, on a pro rata basis, for every month or major fraction thereof worked during the calendar year the Layoff occurred. Health and welfare benefits shall be reestablished on the first day of the month following 30 calendar days of employment. The terms of the District's Retirement Plan govern participation in the Plan upon reemployment after a break in service.

**SECTION 11.8 OUT-PLACEMENT SERVICES**

Employees selected for Layoff may be provided with outplacement services, as determined by the District, from the date of layoff notice.

**SECTION 11.9 ALTERNATIVES TO LAY OFF**

- A. Transfer: Once a reduction in force has been authorized, the District shall have the right by District seniority to transfer affected employee(s) into a vacant position in the classification or comparable classification for which the employee meets the minimum qualifications. Vacant positions include those positions filled by temporary employees.
1. Reassignment to a Lower Classification/Demotion: The District may offer reassignment into a vacancy in a lower classification or reassignment to a classification for which the employee does not meet the minimum qualifications, but can in a reasonable amount of time, obtain the minimum qualifications. The District has no obligation to offer and the employee has no obligation to accept said reassignment and the employee may elect to take the Layoff.

**ARTICLE 12. DISCHARGE, SUSPENSION, DEMOTION, REDUCTION-IN-PAY, AND APPEAL PROCESS**<sup>31</sup>

Section 12.1	Application
Section 12.2	Written Warning
Section 12.3	Adverse Action
Section 12.4	Skelly Notice
Section 12.5	Skelly Conference
Section 12.6	Arbitration Hearing Process
Section 12.7	Suspension, Demotion, Reduction in Pay or Termination
Section 12.8	Immediate Suspension/Removal from District Premises

**SECTION 12.1 APPLICATION**

This Article applies to unrepresented, regular employees, excluding temporary employees, probationary employees, contract employees and Board Officers, and establishes procedures for taking corrective or disciplinary action for misconduct, poor performance, and/or attendance problems.

**SECTION 12.2 WRITTEN WARNING**

A written warning is not an adverse action. An employee who receives a written warning is entitled to write a rebuttal to the letter of written warning. There is no right to appeal the District's decision to issue a written warning. The written warning and any response will be kept together in the employee's personnel file.

**SECTION 12.3 ADVERSE ACTION**

An adverse action includes but is not limited to, a suspension without pay, reduction in pay,<sup>32</sup> demotion, written reprimand in lieu of suspension, or termination.

**SECTION 12.4 SKELLY NOTICE**

The employee will be provided a written notice of the proposed adverse action to be taken against the employee. Such notice shall set forth the reasons for the proposed adverse action, the materials relied upon by the District in proposing the disciplinary action, and a statement advising the employee that he/she has the right to respond to the proposed adverse action before it is imposed.

Within five (5) working days of receipt of the notice of the proposed adverse action, unless the District agrees in writing to an extension of time upon good cause shown by the employee, an employee may request a Skelly Conference or respond in writing. The request or response must be in

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31 Replacing Administrative Regulation No. 254 – Employee Discipline

32 A temporary reduction in pay is not permitted for employees exempt from the overtime provisions of the Fair Labor Standards Act.

writing, dated and signed by the employee and sent to the Executive Director of Human Resources or designee.

If a Skelly Conference is requested, it should generally be held within five (5) working days of the receipt of the request.

If the proposed adverse action to be taken against the employee is termination, said employee will remain on paid leave status until the time has run for the employee to request a Skelly Conference. If the employee does not request a Skelly Conference, the paid leave status will end on the last day to request said conference. If the employee does request a Skelly Conference, the paid leave status will continue until the Skelly Conference decision is rendered. While an employee is on paid leave status, s/he shall remain available by telephone to his/her supervisor during regular working hours.

### **SECTION 12.5 SKELLY CONFERENCE**

The purpose of the Skelly Conference is to provide the employee an opportunity to present additional facts or mitigating circumstances he/she wishes the District representative to take into consideration before a final disciplinary decision is made.

The Executive Director of Human Resources or designee will appoint the Skelly Conference Officer (SCO). The SCO should not be someone who is directly involved in the incident that gave rise to the proposed discipline.

The Skelly Conference is not a full evidentiary hearing. The employee may bring but may not compel the attendance of supporting witnesses. The employee may bring one representative to the meeting; however, the District is not responsible for any fees or costs incurred by the employee exercising the option of representation.

The SCO shall consider the employee's response to the proposed adverse action and the District shall determine whether any modification to or withdrawal of the recommendation is appropriate.

As soon as possible following the conclusion of the Skelly Conference, the SCO will issue a written decision including a notice of appeal rights of the employee.

### **SECTION 12.6 ARBITRATION HEARING PROCESS**

If the employee timely requests a hearing on the adverse action, the Executive Director of Human Resources or designee shall appoint a neutral Hearing Officer and give written notification to the parties of the appointment. The Executive Director of Human Resources or designee shall be responsible for setting a mutually agreed upon time, location and date for the hearing which shall be confirmed in writing.

The Hearing Officer will be an unbiased, neutral District employee, or when appropriate, an outside neutral individual who is not involved in the incident forming the basis of the adverse action. If

the employee has any objections to the proposed Hearing Officer, the employee shall convey the objections in writing to the Executive Director of Human Resources prior to the hearing. The General Counsel shall resolve any conflicts regarding the naming of a Hearing Officer.

At the hearing, both parties are entitled to cross-examine all witnesses and present evidence. The Hearing Officer is not bound by the rules of evidence; however, hearsay may not form the sole basis for the discipline. Both parties have the right to counsel or other representation at the hearing. The District shall not pay for any costs incurred by the employee.

Unless agreed to in writing by the employee and the District, the Hearing Officer shall make every effort to issue a written decision within ten (10) working days from completion of the hearing.

The Hearing Officer may uphold, reject, or modify the adverse action taken. If the Hearing Officer upholds the SCO's decision for adverse action, the employee shall be so informed. If the adverse action is rejected or modified by the Hearing Officer, then the Hearing Officer shall determine an appropriate award to the employee within the range of remedies normally available to labor arbitrators under collective bargaining agreements. For Skelly violations, the Arbitrators' award shall be limited to back pay and benefits from the date of the Skelly violation to the date of his or her opinion and award.

#### **SECTION 12.7 SUSPENSION, DEMOTION, REDUCTION IN PAY OR TERMINATION**

A. Suspension: When a suspension is recommended, the proposed action must comply with the employee's FLSA exempt or non-exempt status for purposes of overtime. Suspension will be without pay. Reduction in accrued leave may be substituted for suspension.

A suspension of five (5) or fewer days does not require a Skelly Conference prior to the suspension.

B. Demotion: When the adverse action results in demotion the employee shall receive the lesser rate of pay as of the date specified in the notice of decision from the SCO. If the Hearing Officer overturns the demotion decision, the employee will receive an appropriate amount of back pay for the period of the demotion.

C. Reduction-in-Pay: An employee who receives a reduction-in-pay shall receive the lesser rate of pay as of the date specified in the notice of decision of the SCO. If the decision of the SCO is overturned, the employee may be awarded back pay as deemed appropriate by the Hearing Officer within the range of remedies normally available to labor arbitrators under collective bargaining agreements.

D. Discharge: If no modification to a discharge recommendation is made following the decision of the SCO the employee shall be notified of the effective date of the discharge. If the discharge is not subsequently upheld by the Hearing Officer then the employee will be entitled to such relief as determined appropriate by the Hearing Officer.

**SECTION 12.8 IMMEDIATE SUSPENSION/REMOVAL FROM DISTRICT PREMISES**

In a situation where management determines that an employee should be immediately removed from the District's premises, the employee will be placed on paid leave until the decision of the SCO is rendered, at which time any discipline that has been determined to be appropriate shall be implemented. At the discretion of the District, while on paid leave an employee maybe permitted to return to the District's premises for the purposes of a scheduled Skelly Conference.

Prior to the commencement of the paid leave, the employee is required to return all District property including without limitation District records, computers, District-issued telephones, tablet computers, office keys, non-revenue vehicle keys, and building passes. The employee may take any personal belongings from his/her work area or make arrangements with others to retrieve them.



### **ARTICLE 13. PROBATIONARY PERIOD** <sup>33</sup>

- Section 13.1 No Automatic Appointment
- Section 13.2 Purpose
- Section 13.2 Initial Probation
- Section 13.4 Supervision
- Section 13.5 Extension of Probation
- Section 13.6 Review
- Section 13.7 No Appeal of Release
- Section 13.8 Probationary Period for Regular Employees

#### **SECTION 13.1 NO AUTOMATIC APPOINTMENT**

Appointment to regular status within the District is not automatic with the mere passage of time. In order for the individual to acquire regular status within the District, the individual must satisfactorily pass the probationary period and be recommended for regular status.

#### **SECTION 13.2 PURPOSE**

As a continuation of the selection process, the probationary period is intended to provide the District with the opportunity to observe the individual's work, and to "on board," train, and assist the individual in adjusting to the position.

#### **SECTION 13.3 INITIAL PROBATION**

The first six (6) months of District employment is a probationary period for newly hired or rehired individuals and is considered the last phase of the selection process. All District positions have the same probationary period of six (6) months. The individual must successfully meet established goals, objectives, and performance standards to obtain regular employment status with the District.

Probationary periods are not applicable to temporary employees.

#### **SECTION 13.4 SUPERVISION**

It is the responsibility of the supervisor and/or Department Manager to monitor and discuss job performance with the individual periodically during the probationary period. Additionally, the supervisor and/or Department Manager should assist the individual in determining and taking necessary action to achieve performance standards and meet established goals and objectives, and become familiar with the District.

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33 Replacing Board Policy No. 282 - Probation

**SECTION 13.5 EXTENSION OF PROBATION**

The District, at its discretion, may extend any probationary period for an additional period of time not to exceed six months when the District believes additional time is needed to completely evaluate the individual's performance.

**SECTION 13.6 REVIEW**

Prior to the end of the initial probationary period, the individual's immediate supervisor will recommend to the Department Manager and the Executive Director of Human Resources whether the individual should pass the probationary period.

**SECTION 13.7 NO APPEAL OF RELEASE**

An individual released during a probationary period shall not have the right to appeal the release.

**SECTION 13.8 PROBATIONARY PERIOD FOR REGULAR EMPLOYEES**

Upon assuming a new classification or position within the same classification, regular employees shall serve a six (6) month probationary period. In the event a regular employee's performance in the new position proves to be unsatisfactory, the employee may be returned to his/her former position. The District will notify the employee of his/her unsatisfactory performance prior to directing the employee to resume his or her immediately prior District position.

**ARTICLE 14. REHIRE**<sup>34</sup>

- Section 14.1 Eligibility for Rehire
- Section 14.2 Review Prior To Rehire
- Section 14.3 Status Upon Rehire
- Section 14.4 Application Procedures
- Section 14.5 Probation Period
- Section 14.6 Salary Placement

**SECTION 14.1 ELIGIBILITY FOR REHIRE**

Former employees who voluntarily terminated their employment with the District with a satisfactory work record or who were laid-off (and who accepted severance pay or are outside of the reemployment period) may be eligible for rehire.

**SECTION 14.2 REVIEW PRIOR TO REHIRE**

It is the responsibility of the Executive Director of Human Resources or designee to review the former employee's personnel record to determine if the applicant's past performance record is satisfactory and the applicant is eligible for rehire.

**SECTION 14.3 STATUS UPON REHIRE**

Individuals who are rehired following a break in service are considered new employees from the effective date of their rehire for most purposes. The terms of the District's Retirement Plan govern participation in the Plan upon reemployment after a break in service.

**SECTION 14.4 APPLICATION PROCEDURES**

A former employee applying for a vacant position must submit an employment application; and if eligible, must follow the normal procedures of the District's employee selection process, including but not limited to customary post-offer, pre-employment occupational health tests.

**SECTION 14.5 PROBATION PERIOD**

Individuals who are rehired into a regular position following a break in service must serve a new initial six-month probationary period.

**SECTION 14.6 SALARY PLACEMENT**

Rehired employees will be placed in the authorized salary range for the vacant position.

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34 Replacing Board Policy No. 292 – Rehire

**ARTICLE 15. OTHER PROVISIONS**

- Section 15.1 Reference Employees
- Section 15.2 Telecommuting
- Section 15.3 Amendments to this Policy

**SECTION 15.1 REFERENCE EMPLOYEES**

Any terms and conditions of employment for unrepresented employees that are not specifically covered here are governed by other existing District policies and procedures and remain within the discretion of the District under applicable law. In the absence of such policy, the General Manager may also refer to the practices applicable to District employees represented by AFSCME, Local 3916 for guidance and consistency.

**SECTION 15.2 TELECOMMUTING**

No overtime will be credited for work at home that is not specifically authorized by the District. In general, District employees are not permitted to work from home; on occasion, some exempt staff members are permitted to do so. Permission to work from home, however, should be approved in advance pursuant to this section.

“Telecommuting” means working one or more days during a work week from home instead of commuting to the normal worksite.

Telecommuting is not appropriate for all employees. No employee is entitled to, or guaranteed the opportunity to telecommute. Offering the opportunity to telecommute is a management option, based upon the discretion of the employee’s immediate supervisor with the approval of the department’s Executive Director and General Manager. Telecommuting is available on an occasional basis to those employees whose work is of such a nature that face-to-face interaction with internal or external customers is minimal and the employee’s tasks can be performed successfully away from the office. Employees requesting to telecommute must already have a safe and ergonomic home office environment and the primary materials and equipment needed at their home in order to telecommute.

Employees who telecommute are expected to be working at their home during their telecommuting work schedule. Personal leave time normally scheduled during a telecommuting employee’s scheduled workday must be arranged in the same manner with their immediate supervisor as employees at their normal worksite. Employees shall not conduct any unauthorized external (non-District) work during their telecommuting work schedule.

Employees who telecommute must maintain the confidentiality of District information and documents, prevent unauthorized access to any District system or information and dispose of work related documents in a manner that will not jeopardize the interests of the District.

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Questions concerning interpretation of this Policy are to be referred to the General Counsel.

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The procedures to request to telecommute are as follows:

- A. Employee makes a written request to immediate supervisor to telecommute providing the reason and the work tasks to be completed while telecommuting. The employee must certify that they already have a safe and ergonomic home office environment and the primary materials and equipment needed at their home in order to telecommute.
- B. Immediate supervisor reviews the request and, if acceptable, forwards the request to the department's Executive Director and General Manager for approval. If the immediate supervisor or the department's Executive Director deems the request unacceptable, the request is denied and the employee is provided with a written explanation as to why it was denied.

### **SECTION 15.3 AMENDMENTS TO THIS POLICY**

Unless waived by the Board of Directors, any proposed amendment(s) to this Policy shall follow a two-step process:

- A. The amendment(s) shall be set out in an informational staff report that is presented to the appropriate committee of the Board of Directors for its review and comment. A copy of this report will be made available to unrepresented employees.
- B. At its next meeting, or any time thereafter, the Board of Directors may adopt the proposed amendment(s) to this Policy.

**ARTICLE 16. AT-WILL EMPLOYEES**

Section 16.1	Term and Employee Status
Section 16.2	Salary Range
Section 16.3	Paid Time Off
Section 16.4	Pre-Tax Payments
Section 16.5	Commuter Tax Benefit
Section 16.6	Employee Assistance Program
Section 16.7	Transit Passes

**SECTION 16.1 TERM AND EMPLOYEE STATUS**

This category of employees serve at the pleasure of the General Manager. Either the employee or the District may terminate the employment relationship at any time, for any reason, with or without notice. This category of employee does not acquire property rights in employment and has no related due process rights pertaining to discipline, discharge or other separation.

The employees classified as “at will” include all Chief and Executive Director positions as well as the following:

- Assistant Director of Maintenance
- Assistant Director of Transportation
- Assistant District Secretary
- Assistant General Counsel
- Attorney I-IV
- Budget Manager
- Capital Planning & Grants Manager
- Contracts Service Manager
- Controller
- Director of Bus Rapid Transit
- Director of Legislative Affairs & Community Relations
- Director of Maintenance
- Director of Management and Budget
- Director of Project Controls & System Analysis
- Director of Revenue Management
- Director of Service Development and Planning
- Director of Systems and Software Development
- Director of Transportation
- Equal Opportunity Program Administrator
- Executive Coordinator
- Human Resources Manager
- Internal Audit Manager
- Labor & Employee Relations Manager

Maintenance Superintendent  
Manager of Systems Analysis  
Marketing & Communications Director  
Media Affairs Manager  
Payroll Manager  
Procurement and Materials Director  
Project Manager  
Protective Services Manager  
Real Estate Manager  
Senior Project Manager  
Training & Education Manager  
Transportation Superintendent

A position not listed above shall be classified at-will if so determined by the Board of Directors at the time it adopts a new or revised classification specification for a vacant position.

### **SECTION 16.2 SALARY RANGE**

A salary range for at-will employees shall be established by the District's Board of Directors upon approval of the classification specification for any position designated as at-will. The General Manager shall have authority to place a new hire at an amount within said range. Any salary increases shall be at the discretion of the General Manager within said range. Should the General Manager desire to provide a salary in excess of the set range, Board approval is required.

### **SECTION 16.3 PAID TIME OFF (PTO)**

In lieu of vacation and sick leave, at-will employees shall accrue PTO. PTO shall be credited to employees on an earned basis as follows:

- Employees with less than one year's service will earn 144 hours of PTO prorated on a monthly basis.
- Employees with one, but less than five years of service shall earn 176 hours of PTO each year.
- Employees with five, but less than ten years of service shall earn 216 hours of PTO each year.
- Employees with 10, but less than 15 years of service shall earn 256 hours of PTO each year.
- Employees with 15, but less than 25 years of service shall earn 296 hours of PTO each year.
- Employees with 25 years or more of service shall earn 336 hours of PTO each year.

Any accrued but unused PTO may be carried over into subsequent calendar years, except that employees may not accrue more than 240 hours of PTO at any time ("maximum accrual"). Any accrued PTO remaining at the time of separation of employment shall be paid to employees. Should the employee have used more PTO than allowed at the time of separation from employment, the overpayment shall be deducted from the employee's final pay check.

Employees may cash out up to 50% of their PTO balances once per calendar year. Cash outs must be for a minimum of 16 hours. PTO balances below 80 hours may not be cashed out.

#### **SECTION 16.4 PRE-TAX PAYMENTS\***

Employees' cost of premiums for benefits provided pursuant to Article 3 of this policy will be deducted from employees' paychecks on a pre-tax basis.

#### **SECTION 16.5 COMMUTER TAX BENEFIT\***

Employees may enroll in the District's Flexible Spending Account and elect to have an amount, up to the federal limit, withheld from employee's pre-tax pay. Once employee has an eligible expense, employee must submit a reimbursement form to claim funds from the spending account.

#### **SECTION 16.6 EMPLOYEE ASSISTANCE PROGRAM\***

All eligible employees may utilize the District's Employee Assistance Program. Please contact the Benefits Department for more information on the program.

#### **SECTION 16.7 TRANSIT PASSES\***

The District provides free bus transportation on AC Transit buses to all service areas to all employees, to their dependents, domestic partners, pensioners, pensioner's spouses and dependent children, widows of pensioners and widows of deceased active employees are eligible for free transportation. Dependents are defined as spouse and dependent children receiving a major portion of their support from the employee and living in the same household with the employee, or who are minor dependent children of divorced or separated parents who are employees. For further information, contact the AC Transit Treasury Department. Passes will be issued in accordance with District policy.

\*Section applies to regular unrepresented employees as well.