

## CHAPTER 9

### NON-DISCIPLINARY SEPARATIONS

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## CHAPTER 9

### NON-DISCIPLINARY SEPARATIONS

**Purpose:** The purpose of this chapter is to describe policies and procedures related to non-disciplinary separations of employees in classified positions.

**Intent:** It is intended that separations from employment will occur: 1) with minimum interruption of public services; 2) with dignity and recognition for employees' contributions to and service with the County; 3) with assurance that all employee obligations to the County have been satisfied; and 4) so that employees are afforded the opportunity to make suggestions for improvement of government services.

#### 9.0 RESIGNATION

##### 9.0.01 Notice of Resignation

All employees must submit a written notice of resignation to their supervisor or Department Head. The notice must be signed by the employee and include the effective date and hour of the resignation. The employee may also choose to include the reason for resignation.

##### 9.0.02 Notice Periods

Employees at full or limited supervisory levels are expected to provide a minimum of thirty (30) calendar days notice prior to separation. All other employees are expected to provide a minimum of fourteen (14) calendar days notice prior to separation. Use of leave during the notice period must be in strict compliance with leave policies.

##### 9.0.03 Withdrawal of Resignation<sup>1</sup>

Employees who wish to request that their resignation be withdrawn must submit the request in writing to their Department Head prior to the effective date of the separation. The Department Head may accept or reject such request. The Department Head decision is final.

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<sup>1</sup>Revised December 15, 2009

**9.0.04            Abandonment of Position\*/\*\***

An employee who, without justification acceptable to the Department Head, fails to report to work for two (2) consecutive work days may be terminated for abandonment of position. The termination shall be considered a resignation without appropriate notice. Prior to termination, a reasonable effort shall be made by the Department Head or manager/supervisor to contact the employee to determine the reason for the absence and make an appropriate decision regarding continued employment. The notice of termination for abandonment of position shall be sent to the employee's last known address.

**9.1            RETIREMENT**

**9.1.01            Information and Assistance**

Eligible County government employees participate in the Virginia Retirement System, which is managed through the Department of Financial Services. Employees who are considering retirement are responsible for contacting Financial Services for information and assistance regarding applicable regulations, provisions and benefits of the Virginia Retirement System. This also applies to employees who are considering retirement due to disability.

**9.1.02            Notice Periods when Retiring**

Employees at full or limited supervisory levels are expected to provide a minimum of thirty (30) calendar days notice when retiring. All other employees are expected to provide a minimum of fourteen (14) calendar days notice when retiring.

**\*Revised October 16, 2007**  
**\*\*Revised October 21, 2008**

**9.2 MEDICAL SEPARATIONS (formerly titled Disability Separations)\***

Human Resources must be contacted for guidance before beginning this process.

**9.2.01 Identification of Medical Condition Affecting Ability to Perform Duties**

If an employee's current physical or mental condition affects the employee's ability to perform essential functions of the job, the Department Head will require the employee to furnish a medical examination evaluation from a qualified health care practitioner. If necessary, the Department Head should approve available paid leave or leave without pay until a determination of the employee's condition is completed.

**9.2.02 Determination of Medical Condition**

If the medical examination report indicates that the employee's condition (physical or mental) does not preclude the employee from performing essential functions of the job, the employee should be returned to duty.

If the report indicates that the employee's medical condition (physical or mental) does interfere with the employee's ability to perform the essential functions of the job, the employee will not be returned to work.

The Department Head can request an independent medical examination (IME) to be performed by a qualified health care practitioner selected by the County at the County's expense.

**9.2.03 Decision After Medical Determination**

**(A) Employee Can Return to Work -**

If the health care practitioner's evaluation states that the employee is expected to recover from the medical condition within a reasonable time (no more than 26 weeks from the date the condition began), the employee will be considered for (1) full-time leave, (2) part-time leave as determined by the health care practitioner, or (3) transfer to a vacant position for which the employee meets minimum qualifications and for which it is reasonably expected the employee can perform essential functions of the job, despite the medical condition.

(B) Employee Cannot Return to Work -

If the health care practitioner's evaluation states that the employee is not able to return to work to perform the essential functions of the employee's position within 26 weeks from the date the condition began, the employee may be: (1) transferred to a vacant regular position for which the employee meets minimum qualifications, and for which it is expected that the employee can perform essential functions of the job, despite the medical condition, or (2) considered for separation from employment, or 3) for operational needs, receive an extension for up to 12 weeks, providing the employee cannot physically return to full duty, and the request is supported by the Department Director. The use of paid leave is permitted during the approved extension.

Under no circumstances may an employee remain in an inactive employment status beyond 38 weeks in a 12 month period and continue employment, unless the employee is on military leave.

The employee should be encouraged to apply for appropriate disability benefits. Employment status does not affect the continuation of disability benefits once approved.

**9.2.04            Providing Sufficient Information to Department \*\***

When the Department or Human Resources requests a medical examination evaluation pursuant to this Chapter, the information provided must be relevant and fully responsive to the inquiry. If this does not occur or if said medical evaluation is not provided within 30 calendar days from the date of the request, either or both, then the employee may be terminated. Likewise, termination may result from a failure of the employee to participate in a recommended and prescribed treatment plan from the medical examination evaluation.

\* Revised June 6, 2006  
\*\* Revised October 16, 2007

**9.3 REDUCTION IN FORCE\***

**9.3.01 General Requirements**

- (A) A reduction in force is initiated by either Board of Supervisors' direction or County Administrator recommendation to the Board of Supervisors that a reduction in force may be necessary due to adverse economic conditions, workload factors, reductions in services, or department reorganizations in which responsibility, duties and/or lines of authority are changed for more effective operation.
- (B) A reduction in force will be limited, as determined by the County Administrator.
- (C) Departments with personnel administered under these regulations may be required to provide input concerning a reduction in force. Such input may include descriptions of programs, functions and/or positions anticipated to be affected by a reduction in force, impact on services, assistance with development of implementation recommendations, or other needed information.
- (D) The Code of Virginia preserves as a non-grievable management prerogative the right to manage the affairs and operations of government to include retention of employees.
- (E) The following factors may also be considered during implementation of a reduction in force:
  - (1) The best interests of the County in terms of maintaining essential services and programs and minimizing a reduction of effectiveness and efficiency;
  - (2) Appropriate alternatives to reduction in force, such as: reduction in employee work hours, reduction of and/or a combining of services and/or positions, reassignment of employees and a reorganization of functions and positions within or among departments;

**9.3.02 Identification of Affected Positions**

The Board of Supervisors and/or County Administrator must identify programs, functions and/or positions to be reduced. Department Heads may be requested to participate in recommendations regarding the identification of programs, functions and/or positions to be reduced.

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\* Revised December 2, 2008

**9.3.03            Identification of Affected Positions with Multiple Incumbents**

Identification of employees who may be affected by a reduction in force is based on retention priority, which is reflected in a document termed the “employee retention register”. The employee retention register is developed by Human Resources in consultation with departments. Employees are separated by retention priority (those with the lowest priority or number of retention points are separated first) until the workforce by department/division/section/position/working title as appropriate is reduced to the number of positions required as directed by the Board of Supervisors. Under no circumstances will persons affected by a reduction in force or a reduction in hours be determined on a voluntary basis. Employees assigned to another classification on an acting basis, though temporary in nature, must be identified by their regular/probationary position classification.

Whole positions may be eliminated or hours may be reduced based on recommendation from the Department Head to the County Administrator, whose decision is final. Employees whose hours are to be reduced are also affected by retention priority described herein.

**Calculating Retention Points for Affected Positions with Multiple Incumbents**

- (A) Working Title or job function, (upon request of the department, if necessary to further distinguish intended positions of the service being reduced);
- (1) **Vacant positions** must be eliminated by department/division/section/position/working title as appropriate before probationary or regular employees in the same identified position, section, division and department are separated.
  - (2) **Temporary positions with Multiple Incumbents** must be separated first. Temporary employees are separated in order of priority of need as determined by the Department Head and are separated under the provisions of Chapter 10.5.
  - (3) **Regular positions with Probationary Employees** must be separated next (before any regular employees, including those whose hours are being reduced). Length of service determines the order of separation of probationary employees, i.e. longer length of service holds higher retention priority. Probationary employees are separated under the provisions of Chapter 10.6.
  - (4) **Regular positions with Non-Probationary Incumbents** are separated last, including those whose hours are being reduced. The order of separation of regular employees is based on retention points (higher points having higher retention priority).

(B) Retention points are calculated, to a fixed date determined by the County Administrator, for regular employees using the following formula:

- (1) Each full month (i.e. Jan. 1- Jan. 31) of County service as a regular employee equals one retention point.

Former service as a regular employee is counted only if the break in service is 26 weeks or less. Service is counted equally for full-time and part-time employees. Any length of leave time (with or without pay), is counted toward retention points. Probationary service is included when calculating retention points. Previous documented service with another employer shall be included if the employer subsequently became absorbed into the County system.

- (2) Each full month of full-time previous temporary service equals one retention point.
- (3) The County has provided procedures for the removal of employees for unsatisfactory performance and for disciplinary reasons; therefore, it will be assumed that all employees, unless otherwise noted, are serving in a satisfactory manner.

If two or more regular employees in an affected position with multiple incumbents have the same number of retention points, priority on the retention register is determined by:

- (a) Length of *regular* County service shall determine priority, with longest County service having highest priority.
- (b) If there is a tie in the length of regular County service, the tie is broken by length of regular service in current position, with longest service in current position having highest priority.
- (c) If there is a tie in the length of service in position, the Department Head must determine the priority order, based on the Department Head's assessment of each employee's overall performance, to include review of employee's personnel files, performance levels, and assessment scores. If the Department Head is unable to resolve the matter, the final determination must be made by the County Administrator.



**9.3.04            Exemption from Retention Priority for Positions with Multiple Incumbents**

- (A)    When it is determined that there is a revenue shortfall in a fee-offset childcare program provided at a specific location, (i.e. Preschool, CASA, YAS), the Department Head may request the retention priority be based on the specific program and location first, then further identified by the methods in section 9.3.03 regarding affected positions with multiple incumbents.<sup>2</sup>
  
- (B)    A Department Head may determine that an employee who holds a regular position with multiple incumbents is essential to the efficient operation of the agency in which he/she is employed because of special skills, knowledge or abilities. The Department Head may wish to retain the employee in preference to an employee with higher retention points. The Department Head shall file a written request with the County Administrator setting forth, in detail, the specific skills, knowledge and abilities possessed by the employee and the reasons why the employee is essential to the effective operation of the agency. If the County Administrator approves the request, the employee may be retained.

**9.3.05            Employees in a Leave Status**

Employees who are on any paid leave (e.g. workers' compensation, STD, LTD), Family and Medical Leave, Leave Without Pay or Military Leave are considered active employees and shall be treated as if they were in their positions. If their positions are not being eliminated/hours reduced, they may not be used as placement options for other employees impacted by the reduction in force.

**9.3.06            Employee Separation Notice**

- (A)    The County Administrator must send an Employee Separation Notice to each regular employee who is affected by the reduction in force. The separation date must provide regular employees with thirty (30) calendar days notice prior to separation. The Employee Separation Notice must be mailed by certified mail to the employee's home address contained in the employee's official personnel file. A second copy shall be hand delivered by the department head to the employee.
  
- (B)    The Employee Separation Notice must contain:
  - (1)    Date and hour separation is effective.
  - (2)    Recognition of employee's service to the County.
  - (3)    Departure procedures and transition assistance information.

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<sup>2</sup> Revised January 4, 2011

- (4) Status of pay and benefits.
- (5) Reemployment procedures.
- (6) Statement of severance payment. In addition to the thirty (30) calendar day notice prior to separation which includes benefits, regular employees will receive a severance payment equivalent to one (1) months salary (authorized annual salary divided by 12). Benefits are not included as part of the severance payment.

Employees are not required to be present at work after receiving an Employee Separation Notice.

Regular employees whose original position's hours are reduced in excess of 20% shall have the option to resign by the effective date of the reduction of hours and be entitled to the severance package. Employees who exercise the option to resign are not subject to reemployment provisions as set forth in 9.3.09.

**9.3.07      Transfer of Affected Employees**

Typical recruitment procedures may be suspended, as necessary, and the County shall attempt to reassign employees affected by a reduction in force in a manner which results in the least possible adverse affect upon the employee. Management considerations shall take precedence over an employee's desire in reassignment actions.

Regular employees who have received Employee Separation Notices must be given priority consideration when applying for transfer to any vacant County position for which they meet minimum requirements. Priority consideration will occur as follows:

- (A) Employees are responsible for requesting a transfer by completing an online County application form for advertised positions.
- (B) Human Resources will process these applications and forward them to the appropriate Department Head within two (2) working days of receipt.
- (C) Within ten (10) calendar days of receipt of applications from HR, Department Heads or hiring managers conducting interviews, will interview these employees and the Department Head will inform the County Administrator or designee if the employee was hired or not hired. The decision of the Department Head is final.

Employees who transfer to another position do not have the option of resigning and receiving the severance package.

- (D) If transfer of an affected employee results in a demotion, salary will be calculated according to new hire procedures. Employees who accept a transfer resulting in a demotion will remain in the retention register for their previous position and may be eligible for repromotion if their previous position becomes available, until such time as the retention register expires.

**9.3.08            Transition Assistance**

Employees being separated as a result of a reduction in force will be provided the opportunity for transition assistance through an informational session(s) provided by Human Resources. The transition assistance session will include information related to County job vacancies, pay, benefits and the Employee Assistance Program.

**9.3.09            Reemployment**

Employees who have been separated, demoted or had their hours reduced through a reduction in force must be reemployed under the following conditions and process. Available vacancies must not be filled until all separated employees from the same position have been given reasonable notification of an offer of reemployment and the opportunity to accept or reject such an offer.

- (A) Employees are reemployed in reverse order of retention, i.e. those with highest number of retention points are reemployed first and employees are only reemployed in their previous position.
- (B) Each employee will be offered only one reemployment opportunity. If an employee rejects an offer of reemployment, he/she forfeits all reemployment or repromotion opportunities.
- (C) Employees are eligible for reemployment for 26 weeks following the date of separation, demotion, and/or reduction in hours.
- (D) The retention register will be created and maintained by Human Resources and will indicate the order of reemployment as described herein.
- (E) A written copy of the reemployment notice shall be mailed by certified mail to the employee's last address in his/her official personnel file. It is the responsibility of the employee to notify Human Resources of address changes while eligible for reemployment.
- (F) Following receipt of the certified reemployment notice, the employee is given five (5) working days to respond to the offer. If the employee does not respond within five (5) working days (no later than ten days from the date the notice is sent via certified mail), the employee with the next highest retention points in the reemployment register will be offered reemployment.
- (G) If an employee is reemployed within 26 weeks from his/her date of separation, the County will follow the reinstatement procedures detailed in 5.6.04.
- (H) Reemployment rights for employees on Military Leave are detailed in the Uniformed Services Employment and Reemployment Rights Act (USERRA).

## **9.4 DEPARTURE PROCEDURES**

### **9.4.01 Administrative Requirements<sup>3</sup>**

Employees who are leaving County employment should seek assistance and information from the Department of Management & Financial Services' Human Resources Division related to benefit options. Prior to an employee's separation date, Department Heads must ensure that:

- (A) all public property and funds under control of the employee have been inventoried and accounted for,
- (B) that all performance assessments have been completed,
- (C) relevant security access has been disconnected,
- (D) keys have been returned,
- (E) the employee's service to the County has been appropriately recognized, and
- (F) all other County administrative requirements have been completed

When leaving employment with Loudoun County, employees are required to return all County property and equipment within three business days of the last date of active work. Failure to do so may result in the County taking action against the individual to regain the property and/or for the County to receive from the individual the value of the property.

### **9.4.02 Exit Interviews**

- (A) Department Heads will offer regular employees departing County service the opportunity for an exit interview with the Department Head. The Department Head should also encourage employees to contact Human Resources for an additional exit interview. Participation of departing employees in exit interviews is voluntary on the part of the employee.
- (B) The exit interview must provide an opportunity for the employee to provide suggestions and/or other information which would result in the improvement of the County Government and its' services.

## **9.5<sup>4</sup>**

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<sup>3</sup> Revised October 4, 2005

<sup>4</sup> Revised June 5, 2012; Effective July 1, 2012 HR policy 9.5 rescinded