

**~~1007.0.0 — DHS LEAVE POLICY~~****~~1007.1.0 — LEAVE ACCRUED IN SECONDARY EMPLOYMENT POSITION~~**

~~Annual, sick and holiday leave may be accrued in a secondary employment position proportionate to the hours worked in both primary and secondary employment. However, no person concurrently employed by two state agencies shall be allowed to accrue annual, sick and/or holiday leave or any other fringe benefit which would exceed that allowable by state law for work performed during a regular forty (40) hour work week.~~

~~1007.1.2 — Originating Section Department Contact~~

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 ————— P.O. Box 1437 Slot WG3  
 ————— Little Rock, AR 72203-1437  
 ————— Telephone: 501-682-5835~~

**~~1007.2.0 — ANNUAL LEAVE~~**~~1007.2.1 — Eligible Employees~~

~~Any employee in a regular salary or permanent extra help position who works full time or who works less than full time, but at least 1,000 hours per year, is eligible to accrue annual leave.~~

- ~~• Permanent extra help positions are specifically appropriated to the Division of Developmental Disabilities Services. Employees in those positions are considered full time employees and have all the rights and benefits of employees in regular salaried positions.~~

~~1007.2.2 — Non-Eligible Employees~~

~~Contract employees, student/summer employees, client workers, temporary, emergency appointments, and temporary extra help employees are not eligible to accrue annual leave.~~

~~1007.2.3 — Accrual of Annual Leave~~

~~A. Eligible full time employees accrue leave at the rate shown in the accrual timetable below. Employees who work less than full time, but at least half time, accrue annual leave in the same proportion as time worked. For example, employees who work half time would receive half of the annual leave accrual shown on the timetable.~~

~~B. Annual Leave Accrual Timetable~~

<u>Years of Employment</u>	<u>Monthly</u>	<u>Annually</u>
Through 3 years	1 Day	12 Days
Beginning 4 through 5 Years	1 Day 2 Hours	15 Days
Beginning 6 through 12 Years	1 Day 4 Hours	18 Days
Beginning 13 through 20 Years	1 Day 6 Hours	21 Days
After 20 Years	1 Day 7 Hours	22.5 Days

~~C. All annual leave is cumulative. However, no employee may have more than thirty days accumulation on December 31st of each year. Accrued leave may exceed 30 days during the calendar year, but **those days in excess of 30 days will be lost if not used by December 31st of each year.**~~

~~D. Years of employment may be continuous state employment or an accumulation of service when the employee was out of state service for a time. Seniority for reinstated employees will be brought forward in completed years of service only. For example, an employee worked for the state for a total of two years and 10 months before terminating employment. After a period of time the employee is rehired and would then be eligible to receive credit for his or her completed whole years of prior service. In this example the credit would be two years, and after one more completed year of service the employee would be eligible to advance to the higher accrual rate of the timetable (beginning 4 through 5 years).~~

~~E. Employees will accrue half their monthly accrual of annual leave if employed on the first working day of the month and work through the 15th. Employees will accrue half their monthly accrual if employed on the 16th of the month and work through the last working day of that month. (If the 16th falls on a weekend or holiday, accrual begins on the first working day thereafter.)~~

~~F. Terminating employees whose last workday is prior to the 15th of the month do not accrue annual leave for that month.~~

~~G. Annual leave is granted on the basis of workdays, not calendar days. Non-work days, such as holidays and weekends (off days), are not charged as annual leave.~~

~~H. Employees continue to earn annual leave at their normal accrual rate when on annual, sick, FLSA compensatory time, and holiday leave. An employee may not earn annual leave during any month when his or her total cumulative days of LWOP reaches or exceeds 10. (Refer to definition of "day" in Glossary)~~

~~I. Employees transferring, without a break in service, between state agencies shall retain all accumulated annual leave.~~

- ~~J. — Be eligible to advance to the higher accrual rate of the timetable (beginning 4 through 5 years).~~
- ~~K. — Employees will accrue half their monthly accrual of annual leave if employed on the first working day of the month and work through the 15<sup>th</sup>. Employees will accrue half their monthly accrual if employed on the 16<sup>th</sup> of the month and work through the last working day of that month. (If the 16<sup>th</sup> falls on a weekend or holiday, accrual begins on the first working day thereafter.)~~
- ~~L. — Terminating employees whose last workday is prior to the 15<sup>th</sup> of the month do not accrue annual leave for that month.~~
- ~~M. — Annual leave is granted on the basis of workdays, not calendar days. Non-work days, such as holidays and weekends (off days), are not charged as annual leave.~~
- ~~N. — Employees continue to earn annual leave at their normal accrual rate when on annual, sick, FLSA compensatory time, and holiday leave. An employee may not earn annual leave during any month when his or her total cumulative days of LWOP reaches or exceeds 10. (Refer to definition of “day” in Glossary)~~
- ~~O. — Employees transferring, without a break in service, between state agencies shall retain all accumulated annual leave.~~

#### ~~1007.2.4 — Use of Annual Leave~~

- ~~A. — Annual leave must be earned before it can be used and leave accrued during a calendar month is not considered to be earned by an active employee until the last working day of the month.~~
- ~~B. — The supervisor must approve the leave request before the leave may be taken. The supervisor grants leave requests for times that will least interfere with the efficient operation of the division or office. Unauthorized leave is a violation of the leave policy, and will result in LWOP being charged to the employee. Other sanctions may be imposed under DHS Policy 1084, Employee Discipline: Conduct/Performance.~~
- ~~C. — The employee's division director or designee must approve annual leave requests of more than two weeks.~~
- ~~D. — The minimum annual leave amount an employee may use is 15 minutes. Smaller amounts will not be authorized or used.~~

#### ~~1007.2.5 — Job Interviews~~

~~Accrued FLSA compensatory time, annual leave, or holiday leave time must be used for interviews within or outside DHS.~~

~~1007.2.6 — Payment Upon Termination~~

- ~~A. — Upon termination, resignation or retirement, the amount due the employee from accrued and unused annual leave shall be paid in a lump sum. This lump sum must not exceed 30 days of annual leave inclusive of holidays.~~
- ~~B. — No employee receiving such additional compensation shall return to state employment until the number of days for which he received the additional compensation has expired. However, the employee may reimburse the agency that made the lump sum payment for the number of days paid but not yet expired and return to state employment. Reimbursement must be made before the date of employment. Such reimbursement will result in the appropriate number of days being reinstated to the employee's accrued annual leave.~~
- ~~C. — Upon death of an active employee of a state agency or institution, the amount of unused annual and holiday leave due the employee shall be paid to the estate of the decedent. This lump sum must not exceed 60 days of annual and holiday leave.~~

~~1007.2.7 — Originating Section Department Contact~~

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~~**1007.3.0 — SICK LEAVE**~~

~~Sick leave may be used concurrently with Family Medical Leave. If the employee has depleted sick leave, eligibility for catastrophic leave should be determined.~~

~~1007.3.1 — Eligible Employees~~

~~Any employee in a regular salary or permanent extra help (as defined in Section 1007.2.1) position who works full time or who works less than full time, but at least 1,000 hours per year, is eligible to accrue sick leave.~~

~~1007.3.2 — Non-Eligible Employees~~

~~Contract employees, student/summer employees, client workers, and temporary, emergency appointments and temporary extra help employees are not eligible to accrue sick leave.~~

~~1007.3.3 — Accrual of Sick Leave~~

- ~~A. — Eligible employees who work a minimum of 1000 hours per year shall accrue sick leave. Eligible employees who work less than full time, but more than 1000 hours per year, accrue sick leave in the same proportion as time worked.~~

- ~~B. — Employees accrue sick leave at the rate of one day for each completed month of service; however, no employee shall have over 120 days accumulated on December 31st of each year. Accrued leave may exceed 120 days during the calendar year, but those days in excess of 120 will be forfeited if not used by December 31st of each year.~~
- ~~C. — Employees will accrue half their monthly accrual of sick leave if employed on the first working day of the month and work through the 15th of that month. Employees will accrue half their monthly accrual if employed on the 16th of the month and work through the last working day of that month. (If the 16th falls on a weekend or holiday, accrual begins on the first working day, thereafter.)~~
- ~~D. — An employee may not earn sick leave during any month when his or her total cumulative days of LWOP reaches 10 or more. (Refer to definition of "day" in Glossary)~~
- ~~E. — Employees continue to earn sick leave at the normal accrual rate when they are on sick, annual, catastrophic, FLSA compensatory time, or holiday leave.~~
- ~~F. — Sick leave is granted on the basis of workdays, not calendar days. Non work days, such as holidays and weekends (off days), are not charged as sick leave.~~

#### ~~1007.3.4 — Use of Sick Leave~~

- ~~A. — Sick leave must be earned before it can be used and leave accrued during a calendar month is not considered to be earned by an active employee until the last working day of the month.~~
- ~~B. — Requests to use sick leave should be made in advance for medical, dental or optical examinations, hospital stays, funerals for or serious illness of the immediate family. Immediate Family (as it pertains to sick leave) — The father, mother, sister, brother, husband, wife, child, grandparents, grandchildren, in-laws, or any individual acting as a parent or guardian of the employee.~~
- ~~C. — If the nature of the sickness makes it impossible to apply for leave in advance, notification of absence shall be given as soon as possible on the first day of absence to the supervisor or person in charge of the office. Divisions or offices may require notification of sickness prior to the start of the workday to prevent disruption of services.~~
- ~~D. — Application for sick leave must be filed within two working days after the employee's return to work.~~
- ~~E. — Employees who are on sick leave for five or more consecutive days must furnish a certificate of illness from an attending physician. The certificate must be provided to agency management upon the employee's first day at work after the illness. A certificate from a Christian Science practitioner listed in The Christian Science Journal may be substituted in lieu of a physician's certificate.~~

- ~~F. — The minimum amount of sick leave that an employee may use is 15 minutes.~~
- ~~G. — Holidays and other non-working days within a period of sick leave shall not be charged as sick leave.~~
- ~~H. — Except in cases of maternity leave or Workers' Compensation, after an employee has exhausted all sick leave he or she may designate the type of leave to be used from any leave balances remaining. After all leave is exhausted, the employee will be put on LWOP.~~

#### ~~1007.3.5 — Misuse of Sick Leave~~

- ~~A. — When a supervisor has reasonable cause to suspect abuse of sick leave, the supervisor may require an attending physician's certificate or a certificate from a Christian Science practitioner listed in The Christian Science Journal for any amount of sick leave. If the employee is unable to furnish this verification or if notification to the supervisor is not made in accordance with this policy, such absence will be unauthorized leave. Unauthorized leave is a violation of this policy, and will result in LWOP being charged to the employee. Other sanctions may be imposed under DHS Policy 1084, Employee Discipline: Conduct/Performance.~~
- ~~B. — A DHS employee on paid sick leave may not be concurrently in work status in connection with any other state employment~~

#### ~~1007.3.6 — Termination or Transfer~~

- ~~A. — Employees transferring between state agencies, without a break in service, shall at the time of transfer retain all accumulated sick leave.~~
- ~~B. — When employees resign from DHS and then return within two pay periods, their sick leave credit at the time of resignation will be restored. If they return after two (2) pay periods, sick leave is not restored.~~
- ~~C. — Employees who are separated due to budgetary reasons or curtailment of work activities (Reduction In Force) shall have all sick leave restored if they return to duty within six months of termination.~~

#### ~~1007.3.7 — Originating Section Department Contact~~

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#### ~~1007.4.0 — FAMILY AND MEDICAL LEAVE POLICY (FMLA)~~

~~1007.4.1 — The Family and Medical Leave Act (FMLA) of 1993 provides qualified employees with up to 12 weeks of unpaid, job-protected leave per year and requires that their group health benefits be maintained during the leave. The National Defense Authorization Act of 2008 (NDAA) amended the Family Medical Leave Act to provide eligible employees leave rights related to military service. This section creates no rights or privileges not contained herein. (Additional leave may be available under rules provided by the Uniform Attendance and Leave Policy Act.)~~

~~1007.4.2 — FMLA leave will always run concurrently with some other type of leave, including sick, annual, worker's compensation, compensatory time, or other leave approved by the employee's supervisor or division management. Paid leave will be used first. After all paid leave has been used; Leave Without Pay (LWOP) will be used. In the case of maternity leave, the employee has the option of using LWOP instead of paid leave.~~

~~1007.4.3 — Definitions:~~

~~A. — Family and Medical Leave Act (FMLA) — Federal statutory and regulatory requirements that provide job protection for employees who must take time off work to attend to certain health and family emergencies, known as “qualifying events.”~~

~~NOTE: In most cases, eligible employees are entitled to a total of 12 weeks of leave in a calendar year. The exception to the 12-week allotment is if an employee is the spouse, son, daughter, parent, or next of kin of a covered service member, in which case the employee is entitled to up to 14 additional weeks of military caregiver leave, for a total of 26 weeks per calendar year. A “week” of leave is determined according to the number of hours per week the employee normally works.~~

~~B. — Qualifying Event — an event or circumstance which qualifies an employee to FMLA protection. Qualifying events include only the following:~~

- ~~1. — the birth of a child and caring for the newborn child within one year of birth;~~
- ~~2. — the placement with the employee of a child for adoption or foster care, and caring for the newly placed child within one year of the placement;~~
- ~~3. — caring for the employee's spouse, parent, or child with a serious health condition;~~
- ~~4. — the employee's own serious health condition that makes the employee unable to perform the essential functions of his or her job;~~

5. ~~any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered service member on covered active duty; or~~
  6. ~~caring for a covered service member with a serious injury or illness who is the spouse, parent, son, daughter, or next of kin of the employee.~~
- C. ~~Serious Health Condition—An illness, injury, impairment, or physical or mental condition that involves:~~
1. ~~Inpatient Care—Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility;~~
  2. ~~Continuing treatment by a health care provider—Any period of incapacity of more than three consecutive calendar days that also involves continuing treatment, as follows:~~
    - a. ~~Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or~~
    - b. ~~Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider. A regimen of continuing treatment includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. It does not include the taking of over the counter medications or other similar activities that can be initiated without a visit to a health care provider;~~
    - c. ~~Any period of incapacity due to pregnancy;~~
    - d. ~~Treatment for a chronic health condition that (a) requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider, (b) continues over an extended period of time (including recurring episodes of a single underlying condition), and (c) may cause an episodic rather than continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);~~
    - e. ~~A period of incapacity that is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but not receiving active treatment by, a health care provider. Examples include Alzheimer's, severe stroke, and the terminal stages of a disease;~~

- ~~f. Multiple treatments for non-chronic conditions — Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition such as cancer, severe arthritis, or kidney disease that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment; or~~
- ~~g. Continuing supervision of, but not necessarily active treatment by, a health care provider due to a serious long-term or chronic condition or disability which cannot be cured.~~

~~NOTE: The FMLA allows leave for substance abuse only in order to undergo treatment by a health care provider and specifically excludes employee absence because of the use of the substance. Stress qualifies as a serious health condition only if it rises to the level of a qualifying diagnosis of mental illness or results in a physical illness. Additional medical information will be necessary to justify FMLA leave where substance abuse or stress is the asserted qualifying events.~~

- ~~D. Period of Incapacity — A period of time when an employee or family member is unable to work, attend school or perform other regular daily activities due to the serious health condition, treatment of the condition, or recovery there from.~~
- ~~E. Treatment for purposes of FMLA includes examinations to determine if a serious health condition exists and evaluation of the condition, but does not include routine physical examinations, eye examinations, or dental examinations.~~
- ~~F. Health Care Provider — A doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices or any other person determined by the United States Department of Labor to be capable of providing health care services. Included in the second part of that definition are podiatrists, dentists, clinical psychologists, clinical social workers, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated to exist by x ray), nurse practitioners and nurse midwives, and Christian Science practitioners.~~
- ~~G. Spouse — A husband or wife as defined or recognized under state law for purposes of marriage. The state of Arkansas does not recognize common law marriage. FMLA leave is not available for an employee to care for an unmarried domestic partner.~~

- ~~H. Parent—The biological parent of an employee, or an individual who stands or who stood in loco parentis to an employee, when the employee was a son or daughter (as defined in item I). It does not include parents in law.~~
- ~~I. Son or Daughter—A biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis:~~
- ~~1. Under eighteen years of age; or~~
  - ~~2. Eighteen years of age or older and incapable of self care because of physical or mental disability.~~

~~1007.4.4—Eligibility:~~

- ~~A. To be eligible for FMLA leave under this policy an employee must have been employed by the state for at least twelve (12) months and must have worked at least 1,250 hours during the twelve month period preceding the commencement of the leave.~~

~~NOTE: Worked hours does not include hours turned in for leave.~~

- ~~B. Spouses who are both employed by the state are entitled to a total of twelve (12) weeks of FMLA leave (rather than twelve weeks each) for the birth or adoption of a child or for the care of a sick parent, regardless of which parent or the number of parents involved. An employee is entitled to FMLA leave to care for his or her parent only. Each spouse is entitled to twelve (12) weeks for their own serious health condition or the care of a child or spouse.~~

~~Example: John and Sue are a married couple and both are employed by the State of Arkansas. John requests and is approved for two weeks' leave to care for his mother while she recovers from surgery. Later that same year, Sue requests twelve weeks' leave to care for her own parents while they await placement in an assisted living facility. Sue would only be entitled to take ten weeks' leave for that qualifying event. She is still entitled to the remaining two weeks' FMLA protection for a qualifying event that involves herself, spouse or child.~~

~~1007.4.5—Employee Responsibilities:~~

- ~~A. The employee shall provide reasonable notice to his or her supervisor of the need to take leave. A minimum of thirty (30) days' notice is required, unless the need for the leave was unforeseen or such notice is otherwise impracticable, in which case notice must be given as soon as practicable, but no later than two days after the leave begins.~~
- ~~B. The employee shall inform his or her supervisor if leave is requested for any of the reasons constituting a qualifying event, as defined in this policy. An employee who has been approved for intermittent FMLA leave must inform his or her supervisor if a particular leave request is for FMLA purposes.~~

- ~~C. The employee shall cooperate with any reasonable inquiry from a supervisor as to the reason for a leave request. "Reasonable inquiry" means an inquiry seeking information to establish whether leave is requested for a qualifying event, including but not limited to whether the employee is requesting leave for his or her own or a family member's serious health condition. Failure to cooperate with a reasonable inquiry may result in non-designation of FMLA leave, loss of FMLA protection, denial of the leave request, as well as possible disciplinary action.~~
- ~~D. The employee shall cooperate with any referral by the division for a second opinion from a DHS-selected health care provider.~~
- ~~E. If the employee disagrees with the report of the second opinion provider, the employee shall act in good faith to reach an agreement with the division on whom to select as a third opinion provider.~~
- ~~F. An employee on continuous FMLA leave shall notify his or her supervisor at least every thirty (30) days of his or her current status and anticipated return to work.~~
- ~~G. An employee requesting intermittent or reduced schedule FMLA leave shall provide reasonable notice of each absence from work. Where intermittent leave is requested for planned treatments or activities, a written leave schedule must be provided as far in advance as practicable. The employee must make reasonable efforts to schedule the leave to minimize disruption to DHS operations. Where intermittent leave is requested for episodic periods of incapacity or other unforeseeable events, use of leave must be consistent with the medical certification or recertification may be requested.~~
- ~~H. The employee must keep track of how much FMLA leave he or she uses each calendar year and inform his or her supervisor before the FMLA entitlement is exhausted.~~
- ~~I. Employees may fulfill the above requirements through a representative, such as a family member, only when the employee is severely incapacitated. Medical certification of such incapacity may be requested.~~

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1007.4.6 — Designation of FMLA Leave:

- ~~A. When an employee is absent from work, or gives notice that he or she will be absent in the future, the supervisor shall conduct a reasonable inquiry as to the reason for the absence.~~
- ~~B. If the absence or leave request appears to be related to a FMLA qualifying event which has not been certified in the past 12 months, or if the supervisor is not sure, the supervisor shall notify the division personnel manager of the leave request and reason for the request.~~

- ~~C. The personnel manager shall arrange an informal consultation of the Staffing Review Committee, including the immediate supervisor/manager, division personnel staff, and other necessary management representatives. Within two business days of the leave request, the Staffing Review Committee shall determine:~~
- ~~1. Whether the leave request appears to be related to a FMLA qualifying event;~~
  - ~~2. Whether the employee is eligible for FMLA leave; and~~
  - ~~3. Whether the employee has remaining FMLA leave available in the calendar year.~~
- ~~D. If the leave request appears to be related to a qualifying event, or if the committee is not sure, the division personnel manager or other management representative shall complete form WH-0381, notifying the employee of his or her rights under FMLA, including whether he or she is eligible for FMLA and whether FMLA leave for the calendar year has been exhausted.~~
- ~~E. If the employee has been disciplined or is being investigated for misuse of sick leave, contact OCC or the DHS Personnel Compliance Official prior to taking any action that may impact the use of Family Medical Leave.~~
- ~~F. If the employee is FMLA eligible and FMLA leave has not been exhausted, the employee shall be required to provide certification of the qualifying event. See section 1007.4.7 for complete instructions.~~
- ~~G. Upon exhaustion of FMLA leave, the employee shall be required to return to work on his or her normal schedule unless additional leave has been approved under another policy. If the employee is unable to return to work and no justification exists for approving additional leave under another policy, the employee shall be terminated without prejudice.~~
- ~~H. Upon receipt of a complete and sufficient certification of the leave, or if employee has failed to provide complete and sufficient certification despite reasonable opportunity to do so, the division personnel manager shall complete form WH-0382 and forward it to the employee, notifying him or her of the outcome.~~
- ~~I. The supervisor and the division personnel manager are responsible for monitoring the employee's use of leave and ensuring that FMLA leave is designated appropriately in AASIS.~~
- ~~J. The division personnel manager shall notify the employee in writing when he or she has two weeks of FMLA leave remaining, and again when he or she has one week of FMLA leave remaining.~~

~~1007.4.7 — Medical Certification:~~

- ~~A. The division Staffing Review Committee shall require that the employee provide complete and sufficient certification of any qualifying event for FMLA leave. The employee shall be given fifteen (15) calendar days to obtain the certification.~~
- ~~B. If the certification is incomplete or insufficient, the division personnel manager or other management representative must complete WH 0382 to advise the employee and allow the employee a reasonable opportunity to cure the deficiencies. The form must provide the required notice of what additional information is necessary to make the certification complete and sufficient. The employee shall have seven (7) calendar days to cure the deficiency, unless seven days is not practicable under the particular circumstances despite the employee's diligent good faith efforts.~~
- ~~C. To be considered complete and sufficient, a medical certification of a serious health condition must be signed by a health care provider and contain the following information:~~
- ~~1. The date on which the serious health condition commenced.~~
  - ~~2. The probable duration of the condition.~~
  - ~~3. The appropriate medical facts within the knowledge of the health care provider regarding the condition. This should include any information necessary to justify the need for the amount and type (i.e., continuous or intermittent) of the requested leave. In some cases, a general description of the diagnosis or treatment may be sufficient. In other cases, more detailed information about symptoms, risk of complications, treatment and side effects, or other medical facts may be required. Certifications containing vague, ambiguous, or non-responsive information or insufficient facts to justify the requested leave will be deemed insufficient. The employee may be asked to submit additional information or a second opinion may be requested.~~
  - ~~4. If the leave is to care for a family member (form WH-0380-F), the certificate must contain a statement that the eligible employee is needed to care for the son, daughter, spouse or parent and an estimate of the amount of time required.~~
  - ~~5. If the leave is due to the employee's illness (form WH-0380-E), a statement that the employee is unable to perform the functions of the position must be provided.~~
- ~~NOTE: Failure to submit a complete and sufficient certification within the allotted time period may result in denial of FMLA leave.~~
- ~~D. If an employee submits a completed certification signed by a health care provider, the employee's direct supervisor may not request additional information from the employee's health care provider. However, a health care provider representing DHS or a division management official may contact the~~

~~employee's health care provider for purposes of clarification and authentication of the medical certification, such as in cases of an illegible form or where the authenticity of the form is in question. No representative of the Department may contact the employee's health care provider for any other purpose without the employee's express written permission.~~

- ~~E. If there is reason to doubt the validity of a medical certification, or if the information provided is not sufficient to justify the requested leave, the Department may require a second opinion from a health care provider designated or approved by the Department so long as that provider is not employed by the state on a regular basis (full time or part time). If that opinion differs, the opinion of a third health care provider jointly approved by the department/division and employee may be solicited. The third opinion shall be final and binding. The opinions of both the second and third health care providers shall be obtained at the division's expense.~~

~~NOTE: The health care provider cannot be employed full time or part time on the state payroll. In addition, the employer may not regularly contract with or utilize the services of the provider unless the employer is located in an area where access to health care providers is limited (e.g., a rural area with only one or two doctors).~~

- ~~F. DHS and the employee must each act in good faith in an attempt to reach agreement on the selection of the third health care provider. If DHS does not attempt in "good faith" to reach agreement, DHS will be bound by the first certification. If the employee does not attempt in "good faith" to reach agreement, the employee will be bound by the second certification.~~
- ~~G. Recertification of a serious health condition shall be required according to the following schedule:~~
- ~~1. If the most recent certification indicated the minimum duration of the condition would be less than 30 days, recertification may be required every 30 days in connection to an absence of the employee.~~
  - ~~2. If the most recent certification indicated the minimum duration of the condition would be more than 30 days but less than a year, recertification may be required when that certification expires in connection to an absence of the employee.~~
  - ~~3. If the most recent certification indicated the minimum duration of the condition would be more than a year, recertification may be required every 12 months in connection to an absence of the employee.~~

~~1007.4.8 Recertification may be requested more often than the above schedule if the employee requests an extension of leave; if there has been a significant change in circumstances from what was described on the most recent certification; or if the employer receives information that casts doubt on the stated reason for the leave or~~

~~the validity of the certification. Medical information is confidential. Each division, office, or unit shall maintain employee medical records in a separate file in a locked file cabinet, with access restricted to the unit head and the division personnel manager. The DHS Policy and Administrative Program Management Unit (PAPM) is the custodian of any medical records received from, on behalf of, or regarding any division employee or applicant including information regarding an employee's illness or medical condition in connection to leave requests.~~

~~1007.4.9 Intermittent or Reduced Leave Schedule — FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances:~~

- ~~A. Leave may be taken on an intermittent or a reduced leave (part time) schedule if it does not result in a reduction in the total amount of leave to which the employee is entitled.~~
- ~~B. Only the amount of leave actually taken may be counted toward the twelve weeks of leave to which an employee is entitled. For example, if an employee who normally works five days a week takes off one day, the employee would use one fifth of a week of FMLA leave.~~
- ~~C. Leave may be taken intermittently when medically necessary. If an employee requests intermittent leave that is foreseeable based on planned medical treatment, DHS may require such employee to transfer temporarily to an available alternative position within the division where the position is located, with equivalent pay and benefits but which better accommodates recurring periods of leave.~~
- ~~D. When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if DHS agrees. A schedule reduction might occur where an employee, with DHS agreement, works part time after the birth of a child or takes leave in several segments.
 
  - ~~1. DHS agreement is not required for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.~~
  - ~~2. An expectant mother will take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work.~~
  - ~~3. The twelve weeks of leave that's provided within a 12 month period for the birth of a child and to care for the newborn child begins at the beginning of the childbirth and must be taken within one year of the birth. If the twelve weeks has not been used within that one year, the remaining weeks are not added into the new calendar year for the birth of a child.~~~~
- ~~E. An employee may request leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend~~

~~counseling sessions, appear in court, consult with his or her attorney or doctor(s) representing the birth parent, or submit to a physical examination.~~

- ~~F. FMLA may begin prior to or on the actual date of birth or placement for adoption or foster care. In the case of birth or adoption eligibility for FMLA, leave shall expire at the end of the twelve month period beginning on the date of a child's birth or placement. However, leave used for this purpose shall also be calculated on a calendar year basis.~~
- ~~G. An employee may request an intermittent or reduced leave schedule to care for a family member in situations where the family member's condition is intermittent, where the employee may be needed to share care responsibilities with another party, or to arrange for changes in care, such as a transfer to a nursing home.~~
- ~~H. Intermittent leave may be taken for a serious health condition that requires treatment by a health care provider periodically, rather than for one continuous period.~~
- ~~I. Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.~~

#### ~~1007.4.10 Employment and Benefits Protection:~~

- ~~A. Upon return from Family Medical Leave, an employee shall be entitled to be restored to the position formerly occupied or a position with equivalent benefits, pay, status, responsibilities and duties, and other terms and conditions of employment.~~
- ~~B. Apart from the paid leave actually used during the Family Medical Leave period, the taking of leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. However, no seniority or employment benefits shall be accrued during the period of leave, unless the employee is entitled to those benefits under other DHS policy. The employee is not entitled to any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken Family Medical Leave.~~
- ~~C. The Department shall maintain benefits coverage for the employee under its group health plan at the same level and under the conditions coverage would have been provided if the employee had continued in employment. The Department shall continue to pay the employer matching portion of the health insurance premium and the employee will pay the employee's portion, if such was the arrangement prior to the Family Medical Leave. If the Department paid the full premium, it must continue to do so.~~

- ~~D. An employee may choose not to retain health coverage during leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, without any qualifying period, physical examination, or exclusion of pre-existing conditions. (Employees need to contact the DHS payroll section within one pay period if they want to reinstate their insurance.)~~
- ~~E. The Department's obligation to maintain health insurance coverage ceases under FMLA if an employee's premium payment is more than 30 days late. Written notice to the employee that the payment has not been received must be mailed at least 15 days before coverage is to cease.~~
- ~~F. The Department may recover any payments made by it to cover the employee's share of the premium once the employee returns to work. DHS may recover its share of health plan premiums paid during unpaid FMLA if the employee fails to return to work unless the failure to return to work is due to a serious health condition or other circumstances beyond the employee's control. If DHS has maintained other benefits such as life or disability insurance in order to meet its responsibilities to provide equivalent benefits to the employee upon return from FMLA leave, DHS is entitled to recover the costs incurred for paying the premium whether or not the employee returns to work.~~

~~1007.4.11 Record Keeping Requirements:~~

- ~~A. The Department must keep the following records for no less than three years and make them available for inspection, copying and transcription by Department of Labor (DOL) representatives upon request:~~
- ~~1. Basic payroll and identifying employee data, including name, address and occupation; rate or basis of pay in terms of compensation; daily and weekly hours worked per pay period (unless considered exempt by the Fair Labor Standards Act); additions to or deductions from wages; and total compensation paid.~~
  - ~~2. Dates FMLA Leave is taken.~~
  - ~~3. The hours of leave (if FMLA Leave is taken in increments of less than one full day).~~
  - ~~4. Copies of employee notices of leave furnished to the Department, if in writing, and copies of all general and specific notices given to employees as required under FMLA and its regulations.~~
  - ~~5. Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave.~~
  - ~~6. Premium payments of employee benefits.~~

7. ~~Records of any dispute between the Department and an employee regarding designation of leave as FMLA including DHS requests for second or third opinions.~~
  8. ~~DHS/employee agreement on work schedule during intermittent or reduced schedule leave.~~
- ~~B. Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members must be maintained in separate files and be treated as confidential medical records. The DHS Policy and Administrative Program Management Unit (PAPM) is the official custodian of official medical records received from, on behalf of, or regarding any division employee or applicant. The only persons who can obtain access to these confidential records are (1) supervisors and managers who need to be informed of restrictions on the work or duties of an employee and necessary accommodations, (2) first aid and safety personnel if an employee's physical or medical condition requires emergency treatment, and (3) government officials investigating compliance with FMLA.~~
- ~~C. The general rule established by the statute is that DOL may only require DHS to submit its books or records for review once during any twelve month period. However, if DOL has reasonable cause to believe DHS has violated FMLA or its regulations, or if DOL is investigating an employee complaint, it may request or subpoena the Department's books or records at any time.~~

#### ~~1007.4.12 Effect of Other Laws:~~

##### ~~A. State Law~~

~~Nothing in FMLA supersedes any state or local law that provides greater family or medical leave rights than those provided by FMLA. For example, in Arkansas, employees who take maternity leave have the option to reserve annual and sick leave balances and go directly on leave without pay. Even if the Department normally requires employees to use their leave balances during FMLA leave, it must follow state law with regard to maternity leave.~~

##### ~~B. The National Defense Authorization Act of 2008 (NDAA) amended the Family Medical Leave Act to provide eligible employees leave rights related to military service.~~

~~1. Military Caregiver Leave entitles eligible employees who are the spouse, parent, child, or next of kin of covered service member who incurred a serious injury or illness on active duty may take up to twenty six (26) workweeks of leave during a "single 12 month period" for an injured service member. Military Caregiver Leave is used in combination with regular FMLA leave. Employee's request for Military Family Leave must be submitted using the Department of Labor form WH 385, Certification for Serious Injury or illness of Covered Service member.~~

- ~~2. Qualifying Exigency Leave entitles an employee of a spouse, son, daughter or parent who is an active military member within the National Guard or Reserves to take a total of twelve (12) workweeks of unpaid leave in a calendar year to manage their affairs while the member is on active duty in support of a contingency operation. A spouse, son, daughter or parent of an active military member within the Regular Armed Forces is entitled to this leave if the service member is deployed or called to be deployed to a foreign country. Employee's request for Exigency Military Family Leave must be submitted using the Department of Labor form WH 384, Certification of Qualifying Exigency for Military Family Leave.~~

~~NOTE: Supervisors are still responsible for completing DOL Forms WH 381 and WH 382 with Military Family Leave.~~

- ~~3. Qualifying Exigency Leave Eligibility:~~
- ~~a. Short Notice Deployment must be a deployment for a period of seven days from the date of notification.~~
  - ~~b. Military Events and Related Activities consist of official ceremonies, programs or events sponsored by the military, family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations or the American Red Cross that are related to the active duty or call to active duty status of a covered military member.~~
  - ~~c. Childcare and School Activities that arise from active duty or call to active duty status of a covered military member such as arranging for alternative childcare, provisional childcare on a non-routine or urgent, or immediate need basis, enrolling or transferring a child in a new school or daycare facility and attending meetings at a school or a day care facility.~~
  - ~~d. Financial and Legal Arrangements consist of making or updating arrangements that must be addressed in the absence of a covered military member.~~
  - ~~e. Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member.~~
  - ~~f. Rest and Recuperation allows five (5) days of leave to be spent with a covered military member who's on short-term temporary leave during deployment.~~

- ~~g. Post Deployment Activities consist of arrival ceremonies, reintegration briefings and events, official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status and addressing issues arising from the death of a covered military member.~~
- ~~h. Additional Activities not encompassed in the other categories but agreed to by the employer and employee.~~

~~C. Americans With Disabilities Act (ADA):~~

- ~~1. ADA "disability" and FMLA "serious health condition" are different concepts and must be analyzed separately. FMLA entitles eligible employees to twelve weeks of leave per calendar year, whereas, ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employers to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas, ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.~~
- ~~2. When two laws interact, i.e., the employee is eligible under both, the Department should provide the greater right to the employee. An individual with disabilities may be entitled to continuous, reduced schedule, or intermittent leave as "reasonable accommodation," which may also be counted as FMLA leave. Because FMLA requires insurance coverage, the individual with disabilities would receive health insurance during the 12 week FMLA eligibility period even though it is not an ADA requirement.~~
- ~~3. FMLA requires reinstatement to the same or equivalent position. If the employee were unable to perform the essential functions of that equivalent position, even with reasonable accommodation, because of a disability, the ADA may require the employer to make reasonable accommodation at that time by allowing the employee to work part time or by reassigning the employee to a vacant position, barring undue hardship.~~

~~D. Workers' Compensation:~~

- ~~1. Workers' Compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by DHS). Under Workers' Compensation the Department may offer a medically certified employee a "light duty" position. Under FMLA, the employee is permitted but not required to accept the position. Thus, it is possible that the worker will no longer qualify for Workers' Compensation but is still entitled to~~

~~FMLA leave. When an employee is on Workers' Compensation and Family Medical Leave, Workers' Compensation is keyed. Paper documentation of the FMLA is kept on the leave records.~~

- ~~2. Federal Regulation Part 825 states: "If the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a "light duty job." As a result the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the 12 week entitlement is exhausted."~~

~~E. Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA):~~

~~The Department's obligation under FMLA ceases and a COBRA qualifying event may occur when and if (1) the employment relationship would have terminated if the employee had not taken FMLA leave (e.g., his or her position eliminated due to Reduction in Force and no transfer is available), (2) an employee informs DHS of his or her intent not to return from leave (which may be before the leave starts), or (3) the employee fails to return from leave after exhausting his or her FMLA entitlement.~~

~~F. Employee Retirement Income Security Act (ERISA):~~

~~There is no requirement that unpaid FMLA leave be counted as additional service for eligibility, vesting, or benefit accrual purposes. However, the final regulations clarify that if a plan requires an employee to be employed on a specific date in order to be credited with a year of service for participation, vesting, or contribution purposes, an employee on FMLA leave is deemed to have been employed on that date.~~

~~G. Uniform Attendance and Leave Policy Act:~~

~~The Uniform Attendance and Leave Policy Act are not in conflict with FMLA and the rules of both can be followed at the same time.~~

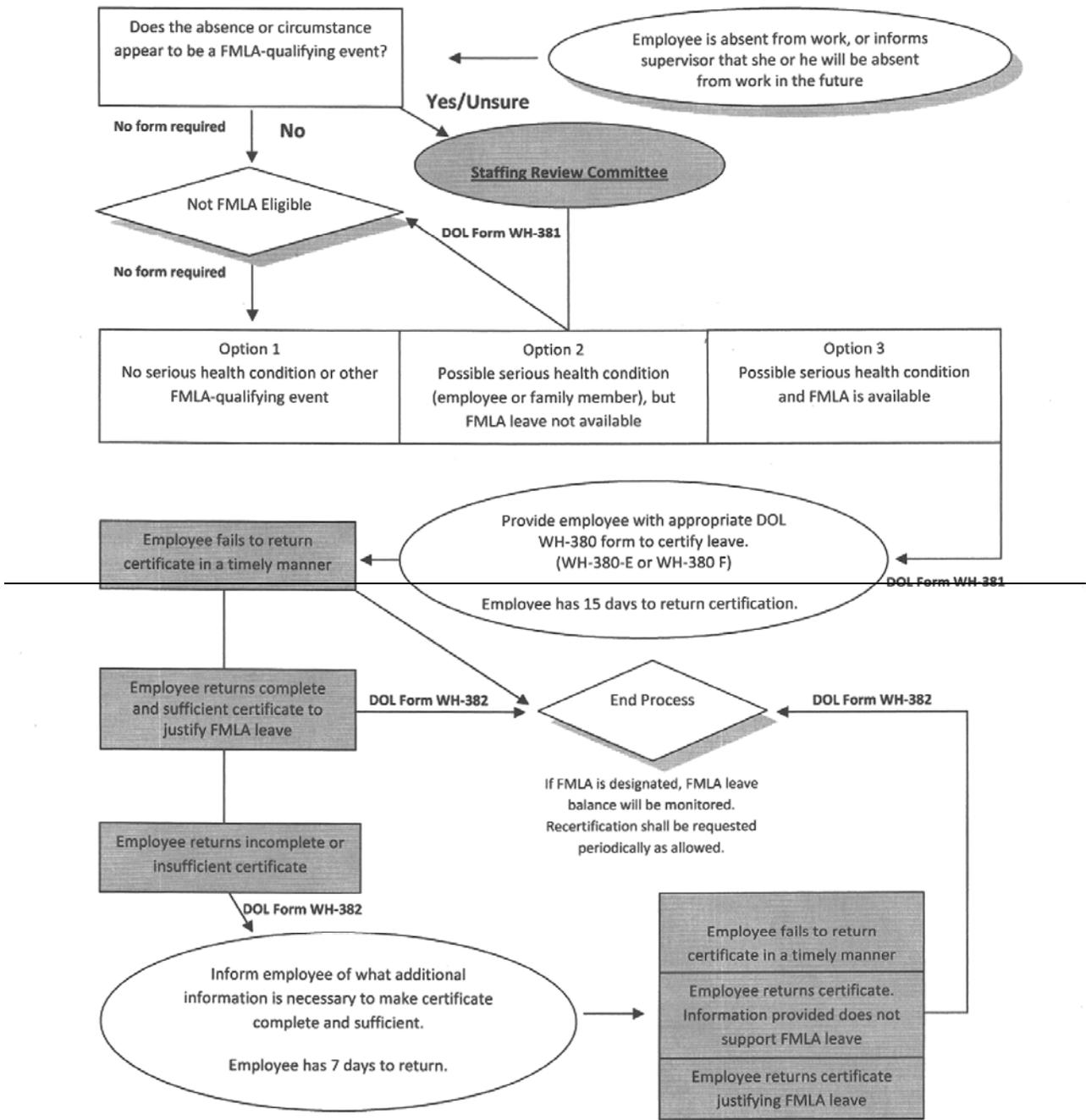
~~1007.4.13 Posting Requirements:~~

~~All state agencies and institutions are required to post and keep posted on their premises in conspicuous places a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division of DOL. The notice must be posted prominently where employees and applicants for employment can readily see it. Agencies and institutions may duplicate the text of the notice or copies of the required notice may be obtained from local offices of the Wage and Hour Division (Telephone: (501) 324-5292).~~

~~1007.4.14 — Originating Section Department Contact~~

~~Office of Chief Counsel  
P.O. Box 1437 Slot S206  
Little Rock, AR 72203-1437  
Telephone: 501-682-8934~~

### FMLA MEDICAL CERTIFICATION FLOW CHART



Shaded areas indicate points when consultation with HR and/or OCC may be advisable

**1007.5.0 — CATASTROPHIC LEAVE**

~~Employees may apply for catastrophic leave for a Catastrophic Illness, defined as a Medical Condition of the employee or of a Qualifying Family Member, as certified by a physician that requires an employee's absence from duty for a Prolonged Period of Time and which, except for the Catastrophic Leave Program, would result in a substantial loss of income to the employee because of the exhaustion of all earned sick, annual, holiday and compensatory leave time.~~

~~NOTE: The Catastrophic Leave Program creates no expectation or guarantee of continued employment with a participating state agency or institution of higher education and is intended simply to assist eligible employees during medical emergencies.~~

~~1007.5.1 — Qualifying Family Member — The spouse, parent, or dependent child of an employee.~~

~~1007.5.2 — Dependent Child — A child of an employee who may be claimed as a dependent under the Arkansas Income Tax Act of 1929.~~

~~1007.5.3 — Medical Condition — A personal emergency limited to catastrophic and debilitating medical situations, severely complicated disabilities and severe accident cases that cause the employee or a qualifying family member to be incapacitated, require a prolonged period of recuperations, and require the employee's absence from duty. A physician (or other individual as provided in Ark. Code Ann. § 21-4-201 et seq.) must document such conditions. Routine disabilities or disabilities resulting from elective surgery (as defined by a physician) do not qualify for Catastrophic Leave.~~

~~1007.5.4 — Onset of Illness — The initial beginning or start as certified by a physician, of the medical condition that created the need for the Catastrophic Leave request.~~

~~1007.5.5 — Prolonged Period of Time — A continuous period of time whereby a medical condition prevents an employee from performing his or her duties. A prolonged period of time is interpreted to be a minimum of thirty (30) working days. An applicant denied Catastrophic Leave for a catastrophic medical condition lasting less than thirty (30) working days may request reconsideration if, subsequently, the medical condition durations lasts thirty (30) working days or more.~~

~~1007.5.6 — Substantial Loss of Income — A continuous period of time where the employee will not be compensated by the employing state agency/institution due to a medical condition after the exhaustion of all earned sick, annual, holiday and compensatory leave.~~

~~1007.5.7 — Continuation of Benefits While on Catastrophic Leave~~

- ~~A. — Employees on catastrophic leave will continue to accrue leave in accordance with existing state leave policies and will receive normal state benefits such as agency contributions to insurance and retirement.~~
- ~~B. — Employees on catastrophic leave will continue to draw their normal rate of pay. Catastrophic leave will not change an employee's increase eligibility date; however, the award of the next merit salary increase will be delayed beyond the anniversary date for the same number of working days that the employee was on leave without pay and catastrophic leave.~~

~~1007.5.8 — Leave Earned and/or Unused While on Catastrophic Leave~~

- ~~A. — Any leave earned while an employee is on catastrophic leave must, as a condition of voluntary participation in the program, be assigned to the Catastrophic Leave Bank, and any restrictions concerning the maintenance of minimum leave balances shall not apply to such assignment. If an employee is on catastrophic leave for even one day in an accrual period, all leave earned during that period shall be returned to the Catastrophic Leave Bank.~~
- ~~B. — Any unused catastrophic leave will be returned to the program in the event the employee is terminated, retires, expires or returns to work prior to the expiration of the previously approved catastrophic leave period.~~
- ~~C. — An employee may be dismissed for failing to report to work at the expiration of the period of approved/granted catastrophic leave. Nothing, however, shall prevent the agency from accepting satisfactory reasons provided by the employee, in advance of the date the employee is scheduled to return to work, and from granting leave without pay status to an employee prior to or after the expiration of such catastrophic leave if in the view of the DHS Director such action is warranted. Supervisors should not take disciplinary action for leave until the application has been formally approved or denied.~~

~~1007.5.9 — Donations to Catastrophic Leave Bank~~

~~Accrued leave may be donated to the Catastrophic Leave Program in no less than one hour increments. Unused hours of awarded catastrophic leave will be returned to the Catastrophic Leave Bank. No employee shall be allowed to donate leave to the Department's program if such donation will reduce that employee's combined accrued sick leave and annual leave balance to less than a combined 80 hours unless the donating employee is terminating employment. Terminated employees returning to state service within two pay periods will have all their donated sick leave reinstated.~~

#### 1007.5.10 — Application Approval

- A. ~~No employee shall be approved for catastrophic leave unless the employee is or is reasonably expected to be on leave without pay status.~~
- B. ~~Catastrophic leave shall not be awarded prior to the date the completed original application is received in the Policy and Administrative Program Management Unit (PAPM) to be processed; thus it cannot be awarded retroactively. The leave will be based on the original completed application date, not the approved date. For purposes of this policy, completed application shall mean the receipt by PAPM of a completed DHS 1191, Recipient Application Form; DHS 1167, Release From Liability; DHS 1194, Physician's Certification for Catastrophic Leave Form; DHS 1191a, Dependent Child Certification (if appropriate) and DHS 1176, Application Checklist. Failure by the employee or supervisor to complete and submit all forms may result in a delay in approval for catastrophic leave.~~
- C. ~~Approval for and use of catastrophic leave should not be considered as a guarantee of continued employment with DHS.~~

#### 1007.5.11 — Eligibility Requirements

- A. ~~The employee must have exhausted all sick, annual, holiday and compensatory leave time and at the onset of the illness or injury, must have had to his or her credit at least 80 hours of combined sick and annual leave. If a recurrence of the same illness necessitates a subsequent catastrophic leave request, the eligibility requirement that the employee have 80 hours of combined sick and annual leave at the onset of the illness will not be required on the illness recurrence date.~~

~~NOTE: The DHS Director may waive the minimum 80 hour requirement for combined sick and annual leave due to an occurrence of one of the following exceptional conditions:~~

- ~~• The employee applying for catastrophic leave bank program benefits on or after February 21, 2003 as provided in Ark. Code Ann. § 21-4-201 et seq. had, during the previous two (2) year period, another, medically documented, catastrophic illness, as defined by this policy, which was not compensated by the Catastrophic Leave Program and caused the exhaustion of all annual and/or sick leave. The employee must submit another completed DHS 1194 Physician's Certification form with the completed application for this previous medical condition.~~
- ~~• The employee applying for catastrophic leave on or after February 21, 2003 as provided Ark. Code Ann. § 21-4-201 et seq. had, during the previous two (2) year period, exhausted his or her sick and annual leave as a direct result of supplementing workers' compensation benefits, which~~

~~were received due to an on the job injury or illness with the State of Arkansas.~~

- ~~B. Elective surgery (as defined by a physician) does not qualify for catastrophic leave.~~
- ~~C. An employee must have a minimum of two (2) years state service in a full time regularly appointed position or was previously employed by a public school district or state supported institution of higher learning for more than two (2) years. The two (2) years does not have to be continuous or exclusively with DHS. Contract employment with DHS will not count toward the service requirement.~~
- ~~D. An employee who has been previously employed by a public school district or state supported institution of higher learning for less than two (2) years are eligible, if an employee's combined years with a state service and public school district or state supported institution of higher learning totals more than two (2) years, or if an employee's lapse of employment between state and a public school district or state supported institution of higher learning is less than six (6) months.~~
- ~~E. Employees will not be eligible to receive catastrophic leave if they have been disciplined for leave abuse during the last two (2) years. The supervisor must document such leave abuses.~~
- ~~F. The DHS Office of Chief Counsel (OCC) shall review payments or cash settlements received in compensation for the injury or illness upon which the catastrophic leave is based, on a case by case basis for possible repayment of catastrophic leave benefits. After OCC review, repayments to the Catastrophic Leave Bank will be made available for use by other DHS employees. The employee shall be responsible for reporting cash settlements received.~~

#### ~~1007.5.12 Misuse of Catastrophic Leave Bank Program~~

~~Alleged or suspected abuse of the Catastrophic Leave Bank Program shall be investigated. On a finding of wrongdoing, an employee shall repay all of the leave hours drawn from the Catastrophic Leave Bank and shall be subject to such other disciplinary action as is determined by the appropriate division director.~~

#### ~~1007.5.13 Catastrophic Leave Committee~~

- ~~A. The committee shall be comprised of five (5) committee members and a committee chairperson. The DHS Director shall appoint these members.~~
- ~~B. Office of Personnel Management (OPM) guidelines requires an effort to select members from a cross section of management and employees. Each division should submit a list of candidates for committee membership. The candidates~~

~~should be from one of the following categories: administrative/clerical, managerial (assistant director/mid level managers/supervisors or above), service delivery, or support function and should include employees from outside Pulaski County. The DHS Director will then make the selections keeping a balance between management/non-management employees and location. The members selected will serve for a period of twelve months with fifty percent replacement every six months. The initial committee will be comprised of three members serving 12 months and three members serving 18 months.~~

#### ~~1007.5.14~~ — Committee Responsibilities

~~The purpose of the committee will be to review all catastrophic leave requests to determine eligibility and make recommendations to the DHS Director. In addition, the committee shall determine continuing eligibility, provided that no employee shall be eligible to be awarded catastrophic leave unless the employee had to his or her credit at least 80 hours of combined sick and annual leave at the onset of the illness or injury, all accrued annual, sick, holiday, and compensatory time have been exhausted; the employee has been employed by the State for two (2) years (even though this two years may not be continuous, it must be full time employment in a regularly appointed or employed position); and the employee has not been disciplined for any leave abuse during the past two years of employment. The committee will abide by DHS Policy 1084, Employee Discipline: Conduct/Performance regarding confidentiality.~~

#### ~~1007.5.15~~ — Review Guidelines

~~All requests will be reviewed using the following parameters:~~

- ~~A. Applications for catastrophic leave shall be reviewed on a first filed, first considered, basis.~~
- ~~B. No employee shall be approved for catastrophic leave unless the employee has provided an acceptable medical certification from a physician supporting the continued absence, and verifying that the employee is and will continue to be incapacitated from performing the employee's duties due to a catastrophic illness/injury of the employee or qualifying family member. Information relative to the employee's assigned duties, such as functional job descriptions, should be made available to the physician.~~
- ~~C. In no case shall catastrophic leave be granted beyond the last date the physician certifies that the employee is unable to work.~~
- ~~D. No employee shall be approved for catastrophic leave in excess of six (6) continuous months (1,040 working hours) unless it can be ascertained that the employee has been denied disability retirement or Social Security benefits. However, the employee has the option of reapplying for additional leave at the conclusion of the catastrophic leave period. Additional leave will be~~

~~considered on a case by case basis with the following consideration: the employee must have a minimum of four (4) years state service in a full time regularly appointed position during which he/she has received no disciplinary action regarding leave abuse~~

~~NOTE: The responsibility for reporting notification of approved Social Security determinations or disability retirement shall lie with the employee.~~

- ~~E. The Catastrophic Leave Committee may approve a catastrophic leave request that was not processed in a timely manner due to an administrative error that occurred within a fiscal year. Administrative errors occurring during preceding fiscal years may not be corrected. Allegations of administrative error will be reviewed by the Committee on a case by case basis to determine if an administrative error exists.~~
- ~~F. If the illness or injury is that of an employee and is covered by workers' compensation, the compensation based on catastrophic leave when combined with the weekly worker's compensation benefit received by the employee shall not exceed the compensation being received by the employee at the onset of the illness or injury.~~
- ~~G. The DHS Director shall review recommendations by the Catastrophic Leave Committee.~~
- ~~H. The decision of the DHS Director shall be final and binding. Nothing, however, shall prevent the DHS Director from taking into account the effect on the Department's operation in granting or denying catastrophic leave or in modifying previously approved catastrophic leave, if in the judgment of the DHS Director such approved leave would seriously affect the Department's operation.~~
- ~~I. Catastrophic leave that would result in a negative balance in the DHS Catastrophic Leave Bank shall not be approved.~~

#### ~~1007.5.16 Record Keeping~~

- ~~A. The DHS catastrophic leave record keeping procedure will monitor:
 
  - ~~1. The amount of leave donated by each employee, the rate of pay and dollar value of such donated leave at the time of donation.~~
  - ~~2. The amount of catastrophic leave awarded, including the name of the recipient, position number, rate of pay, and Social Security number.~~
  - ~~3. Any other data required by the Department of Finance and Administration (DFA) Director.~~~~
- ~~B. These records will be retained by DHS subject to audit by DFA and the Division of Legislative Audit.~~

~~C. The record keeping function will be the responsibility of the Office of Administrative Services (OAS)/PAPM.~~

~~1007.5.17 — Prohibition of Coercion~~

~~An employee may not directly or indirectly intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce, any other employee for the purpose of interfering with any such employee with respect to donating, receiving or using annual, sick or catastrophic leave.~~

~~1007.5.18 — DHS Catastrophic Leave Committee Liaison~~

~~DHS Office of Finance and Administration  
Office of Human Resources  
P.O. Box 1437 Slot WG1  
Little Rock, AR 72203-1437  
Telephone: 501-682-6483  
Fax: 501-683-4351~~

~~1007.6.0 — MATERNITY LEAVE~~

~~Maternity leave is treated as any other leave for sickness or disability, with the exception that an employee may elect to take LWOP rather than exhaust accumulated leave.~~

~~1007.6.1 — Originating Section Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437 Slot WG3  
Little Rock, AR 72203-1437  
Telephone: 501-682-5835~~

~~1007.7.0 — LEAVE FOR BONE MARROW OR ORGAN DONATION~~

~~1007.7.1 — In any calendar year an employee is entitled to the following leave in order to serve as an organ donor or a bone marrow donor.~~

- ~~A. No more than seven days of leave to serve as a bone marrow donor  
B. No more than thirty days of leave to serve as an organ donor~~

~~1007.7.2 — To qualify for leave for bone marrow or organ donation an employee must:~~

- ~~A. Request the leave in writing;  
B. Provide written verification by the physician performing the transplantation that the employee is to serve as a human organ or bone marrow donor;  
C. Provide written verification by the physician performing the transplantation that the employee did serve as a human organ or bone marrow donor.~~

~~1007.7.3 — An employee may use leave as provided in this section without loss or reduction in pay, leave, or credit for time of service and without penalty for requesting or obtaining the leave.~~

~~1007.7.4 — Originating Section Department Contact  
Office of Policy and Legal Services  
P.O. Box 1437 Slot WG3  
Little Rock, AR 72203-1437  
Telephone: 501-682-5835~~

~~**1007.8.0 — COURT AND JURY DUTY LEAVE** (Arkansas Code § 21-4-213)~~

~~1007.8.1 — State Employee as a Juror~~

~~If a Department of Human Services (DHS) employee serves as a juror in state or federal court, the employee is entitled to receive his or her regular salary in addition to any fees paid for such jury service. No annual leave will be charged for the time required for the employee to travel between the employee's work station to the court and serve as a juror. The employee, however, must notify his or her supervisor of the jury duty within one business day of learning that attendance will be required. Failure to provide notice is disciplinable as a failure to follow reasonable work related instructions. In determining the level of discipline, the supervisor must consider the scope and severity of any disruption to departmental activities.~~

~~1007.8.2 — State Employee as a Witness~~

~~A. — Witness Fees And Mileage: General Rule~~

~~A DHS employee who is subpoenaed as a witness to testify about matters within the scope of his or her state employment may not retain any witness fees and mileage that the employee receives in connection with the subpoena. The employee receiving such fees must surrender the fees by endorsing the check to the DHS Accounts Receivable department and mailing it with a copy of the subpoena, and a DHS 1018 Receipt Coding Slip to:~~

~~DHS Accounts Receivable  
P O Box 8181  
Little Rock, AR 72203-8181~~

~~B. — Witness Fees And Mileage: Specific Rules~~

~~1. — Witness fees may be retained if:~~

- ~~a. — The matter to which the employee is subpoenaed is outside the scope of his or her state employment; or~~
- ~~b. — The employee is a party to the matter other than as a representative of DHS; or both.~~

2. ~~Mileage may be retained if the matter to which the employee is subpoenaed is outside the scope of his or her employment. NOTE: the employee must not use a state owned vehicle for travel in obeying a subpoena that is issued regarding a matter outside the scope of the employee's state employment.~~
- C. ~~Salary: An employee receiving a properly served witness subpoena for a matter:~~
1. ~~Within the scope of the employee's state employment is not required to take leave for the time required to testify, including travel time between the employee's work station and the court or deposition site;~~
  2. ~~Outside the scope of the employee's state employment may take court and jury leave rather than annual leave if the employee is not serving as a paid expert witness or is not a party to the matter;~~
  3. ~~Outside of the employee's scope of state employment the employee must take annual leave or leave without pay if the employee is paid any amount in addition to the witness appearance fee for his or her testimony or is a party to the matter.~~

~~1007.8.3 — Court and Jury Leave Includes Absences Due to the Following:~~

- A. ~~Employee is summoned as a juror in either a civil or criminal proceeding.~~
- B. ~~Employee is served a subpoena to appear as a witness in a court proceeding.~~
- C. ~~A copy of the letter summoning an employee or a letter from the attorney is to be placed in the employee's personnel file in the Personnel Office. Each time the employee serves as a juror, the employee is to attach the note received from the Court Bailiff to his or her time sheet or request for leave form. If the required information is not attached, unauthorized leave of absence will be charged for the absence.~~
- D. ~~Court and jury leave is not annual leave.~~
- E. ~~Employees who work night shifts and are required to serve in court during the day shall be allowed to take court and jury leave on the night shift of the day on which they served.~~

~~1007.8.4 — Originating Section Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437 Slot WG3  
Little Rock, AR 72203 1437  
Telephone: 501 682 5835~~

**1007.9 HOLIDAY LEAVE TIME****I Legal Holidays observed by the Department of Human Services**

New Year's Day	January 1
Dr. Martin Luther King, Jr. and Robert E. Lee's Birthday	3rd Monday in January
George Washington's Birthday and Daisy Gatson Bates Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Eve	December 24
Christmas Day	December 25
Employee's Birthday (An employee is granted one holiday to observe his or her birthday)	

- A. The Governor may issue an Executive Proclamation and proclaim additional days as holidays in observance of special events or for other reasons.
- B. The Department of Human Services division offices located in Pulaski County must remain open when a holiday occurs during a general or special session of the legislature. These division offices must maintain the minimum number of employees required to conduct state business. These offices may be permitted to close by Resolution of the General Assembly.
- C. Holidays falling on a Saturday will be observed on the preceding Friday. Holidays falling on a Sunday will be observed on the following Monday.
- D. A holiday is defined as a "day." For example, employees on a compressed work schedule who work a ten-hour day will receive the equivalent 10 hours holiday leave. Employees on an eight-hour standard work schedule will receive the equivalent 8 hours holiday leave. The AASIS Payroll system is programmed to handle these work schedules and the equivalent hours.
- E. A compressed or modified work schedule is defined as a schedule where an employee who would normally work 5 eight-hour days each week works 4 ten-hour days.
- F. All approved compressed or modified work schedules will remain in effect during workweeks that include a holiday observed by state policy. Any request for exceptions from this rule to allow employee work schedule changes during a holiday workweek (such as changing from 4 days/10 hours schedule back to 5 days/8 hours for one week) must be approved by the Division Director and the Department of Human Services Chief Financial Officer.

**H Eligibility for Holiday Pay and/or Equivalent Time Off**

- A. ~~All "regular salary" and "extra help" employees are eligible to receive holiday pay only if they are in pay status on their last scheduled work day before the holiday and at least fifteen (15) minutes on the first scheduled work day after the holiday. An employee on leave of absence without pay is not in pay status and is not eligible to receive holiday pay.~~
- B. ~~When a holiday occurs while an employee is on annual or sick leave, that day will be considered a holiday and will not be charged against the employee's annual or sick leave.~~
- C. ~~When a holiday occurs on an employee's regularly scheduled day off, the employee will be given equivalent time off.~~
- D. ~~The following provisions apply to employees who cannot take holidays as scheduled:~~
- ~~1. Employees must work on holidays when the needs of the divisions/offices/institutions require it. The division director or designee will determine this need. All employees are eligible to receive hour for hour compensation when required to work on a holiday.~~
  - ~~2. Days off in lieu of holidays worked may be taken at a time approved by the employee's supervisor (Such time off is to be taken as soon as is practical).~~
  - ~~3. Holiday or Birthday leave does not expire and may be retained past one year.~~
  - ~~4. When a holiday falls on a regularly scheduled day off, employees who work less than full time will receive holiday time in proportion to their time worked.~~
  - ~~5. Upon termination of employment, the maximum amount of annual and holiday leave to be paid out in a lump sum remains 240 hours.~~
  - ~~6. The minimum holiday leave amount an employee can use is fifteen (15) minutes. No smaller amount shall be authorized or used.~~

### ~~III ——— Originating Section Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437, Slot WG3  
Little Rock, AR 72203-1437  
Telephone: (501) 682-6476~~

**~~1007.10 — LEAVE WITHOUT PAY (LWOP)~~**

~~This policy provides guidance regarding the administration of Leave Without Pay (LWOP) in compliance with Arkansas Code Annotated § 21-4-210 and Arkansas Department of Finance and Administration, Office of Personnel Management Policy Section 105, Subsection 8.0.~~

**~~1007.10.1 — Use of Leave Without Pay~~**

- ~~A. Employees may not take leave without pay until all their accumulated annual leave has been exhausted, except in cases of:
 
  - ~~1. — Maternity Leave~~
  - ~~2. — Military Leave~~
  - ~~3. — Inclement Weather as designated by state policy~~
  - ~~4. — Budget Reductions as determined by the DHS Director~~
  - ~~5. — Agency Disciplinary Actions~~~~
- ~~B. When it has been determined that an employee is on LWOP, the supervisor must immediately notify the next higher level of management and insure the LWOP is reported properly on the employee's time sheet.~~
- ~~C. In the case of maternity leave, such employee may elect to take leave without pay, without exhausting accumulated annual and sick leave; refer to DHS Policy 1007.6.0.~~
- ~~D. In the case of Worker's Compensation, refer to DHS Policy 1007.11.0.~~
- ~~E. In the case of leave without pay for military service and/or specialized training, refer to DHS Policy 1007.12.0.~~
- ~~F. In the case of disciplinary actions, DHS may place an employee on disciplinary leave without pay status in accordance with the written and publicized personnel policies of DHS, refer to DHS Policy 1084, Employee Discipline: Conduct/Performance.~~

**~~1007.10.2 — Continuous Leave Without Pay~~**

- ~~A. The DHS Director or designee may grant continuous leave without pay. Any such period shall not exceed six months. Each request for leave without pay is to be considered on a case by case basis. Upon expiration of any six (6) month period of LWOP additional extensions up to six months each may be requested by the employee if updated justification with appropriate documentation is provided.~~
- ~~B. Approval or disapproval of requests for leave without pay as an accommodation should be determined based upon the impact of the operation and mission of DHS, and whether approval would create an undue hardship on DHS.~~

- C. ~~“Undue hardship” is defined as “an action requiring significant difficulty or expense” when considered in relation to a number of factors. These factors may include, but not necessarily be limited to, the nature of the position occupied by the employee and cost of the request in relation to the size, resources, nature and structure of DHS’s operation and mission. Thus, whether or not an accommodation request would create an undue hardship focuses on the resources and circumstances of DHS in relation to the cost or difficulty of providing a specific leave request. Undue hardship refers not only to financial difficulty, but also to requests that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature of operation of DHS.~~
- D. ~~The DHS Director or designee should assess, on a case by case basis, whether a particular request for leave without pay would cause undue hardship. Every request should be evaluated separately to determine if it would impose an undue hardship on DHS, taking into account:~~
- ~~1. the nature and cost of the request~~
  - ~~2. the overall financial resources of DHS~~
  - ~~3. the number of persons employed by DHS~~
  - ~~4. the effect on expenses and resources of DHS~~
  - ~~5. the impact of the request on DHS~~
- E. ~~The DHS Director or designee may declare an undue hardship where a leave request accommodation would be unduly disruptive to other employees’ ability to work efficiently. For example, if granting leave would prevent other employees from doing their jobs, then the significant disruption to the operations of the agency constitutes an undue hardship. In some situations, an employee may be able to provide only an approximate date of return because treatment and recuperation do not always permit exact timetables. If DHS is able to show that the lack of a fixed return date imposes an undue hardship, then DHS can deny the leave. An undue hardship could result if the agency can neither plan for the employee’s return nor permanently fill the position. In other situations, DHS may be able to be flexible.~~

### ~~1007.10.3 Leave Accrual and Insurance Coverage During Leave Without Pay Status~~

- A. ~~An employee who accumulates ten consecutive or nonconsecutive days of leave without pay during any one calendar month loses the leave accrual (annual and sick) for that month only. The annual leave that is lost due to the leave without pay status is based on the rate of accrual authorized for that employee.~~
- B. ~~Employees may continue to participate in agency or institution group insurance programs during the period of leave without pay status. Employees who choose this option must pay the total cost (employee deduction and employer matching) of the coverage. However if an employee is on FMLA or Workers’~~

~~Compensation related leave, agencies are required to remit the employer's matching portion of coverage.~~

~~1007.10.4 Leave Accrual and Insurance Coverage Upon Returning to Work from Leave Without Pay Status~~

- ~~A. The employee will be reinstated with full rights at the end of the period of leave without pay status. An employee who is on LWOP and returns within the required six months continues to earn credited service toward the next rate in the leave accrual schedule just as the employee who had never gone on LWOP. A returning employee's leave accrual rate will not be affected by periods of LWOP, nor will the time of entitlement to a change in leave accrual rate be adjusted because of LWOP. If the position the employee left is no longer available due to a budgetary reduction in staff, the employee will have no options and cannot be reinstated.~~
- ~~B. Employees having kept their group insurance in effect while on Leave Without Pay status are to be fully reinstated in insurance programs when they return to duty. However, employees on FMLA leave are eligible for reinstatement in the insurance program even if the employee failed to pay their premium while on FMLA leave. Upon return from FMLA LWOP (FMLL), employees are responsible for payment of the total amount of premiums that are in arrears. Employees who receive less than ten hours of pay in a given pay period and who do not have Workers' Compensation Leave, Military Leave, or FMLA Leave approved for that pay period will be responsible for the employee premium as well as the employer portion of their medical insurance.~~

~~1007.10.5 Employee's Increase Eligibility Date Upon Returning to Work from Leave Without Pay Status~~

- ~~A. The employee's Increase Eligibility Date will not change.~~
- ~~B. However, the award of the next merit salary increase will be delayed beyond the anniversary date for the same number of work days as the employee was on leave without pay status.~~

~~1007.10.6 Extension of Leave Without Pay Status and Failure to Return from Leave Without Pay Status~~

~~Employees may be dismissed if they fail to report to work promptly at the expiration of the period of leave without pay. However, the DHS Director or designee may accept satisfactory reasons provided by the employee in advance of the date to return to work and extend the LWOP period accordingly.~~

~~1007.10.7 Originating Section Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437, Slot WG3  
Little Rock, AR 72203-1437  
Telephone: (501) 682-6476~~

~~**1007.11.0 WORKERS' COMPENSATION**~~

- ~~1007.11.1 Employees who are absent from work due to a temporary occupational injury or illness and who are entitled to Workers' Compensation benefits may utilize their accrued sick leave as a supplement to such benefits or they may use their accrued annual, holiday, FLSA compensatory time and LWOP. This is not to exceed the leave period authorized under Section 1007.8.3 of this policy. NOTE: When the employee elects to utilize sick leave to supplement Workers' Compensation benefits, the sick leave must be exhausted in accordance with Section 1007.9.2 of this policy.~~
- ~~1007.11.2 The combination of Workers' Compensation benefits and sick leave pay shall not exceed the employee's normal pay period salary. Workers' Compensation is responsible for notifying the Payroll Office of the amount of employee benefits.~~
- ~~1007.11.3 The option will reduce the employee's accrued sick leave on a proportional basis. For example, an employee's normal salary is \$150 per week. The employee receives \$75 Workers' Compensation benefits and elects to receive an additional \$75 per week in sick leave payments. Thus the employee uses sick leave at a rate of one-half, which is equivalent to two and a half (2 ½) days of sick leave for each week of disability.~~
- ~~1007.11.4 Leave used will be reinstated in reverse order from which absence, due to sick leave, is charged for that portion of time taken that was covered by Workers' Compensation. For example, absence due to sick leave is charged in the following order: earned sick leave, earned FLSA compensatory time, earned annual leave, earned holiday, LWOP. Reinstated leave will then be earned holiday, earned annual leave, earned FLSA compensatory time, and earned sick leave.~~
- ~~1007.11.5 Employees who receive benefits for a permanent work related disability may receive full sick leave payments.~~
- ~~1007.11.6 Whenever an employee is injured on the job, it is necessary for the supervisor/manager or designee to immediately file a claim with the Workers' Compensation Commission, Public Employees Claims Division, from which the forms to file the claim should be obtained.~~

~~1007.11.7 Originating Section Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437 Slot WG3  
Little Rock, AR 72203-1437  
Telephone: 501-682-5835~~

~~1007.12.0 MILITARY LEAVE~~~~1007.12.1 Annual Training Duty~~

- ~~A. Permanent, full time employees who are members of the National Guard or any of the reserve branches of the U.S. Armed Forces will be granted paid leave at the rate of fifteen (15) working days per calendar year plus necessary travel time. The fifteen (15) working days per calendar year plus travel time are for "annual training requirements." The employee must attach a copy of his or her military orders to each request for military leave.~~
- ~~B. The military leave granted to an employee will accumulate for use in succeeding calendar years until it totals fifteen (15) days at the beginning of the calendar year, for a maximum of thirty (30) military leave days available in any one calendar year.~~

~~1007.12.2 Active Duty for Military Service~~

~~A permanent, full time employee who is drafted or called to active duty in the Armed Forces of the United States or who volunteers for military service shall be placed on extended military Leave without Pay (LWOP). All unused sick leave at the time of military leave will be reinstated at the time the employee returns. All accrued, unused annual leave, FLSA compensatory time and holiday leave at the time of military leave will be reinstated at the time the employee returns to work unless the employee requested and received a lump sum payment for the accrued, unused leave when placed on the extended military leave.~~

~~1007.12.3 Active Duty for Purpose of Specialized Training~~

~~In cases where an employee volunteers or is ordered to active duty for the purpose of special training, the employee has the option of using military leave or LWOP for the period of training unless the employee elects to use his accrued annual leave. This leave is given in addition to annual training. The employee retains eligibility rights including accumulated annual leave (unless the above option has been exercised) and any sick leave not used at the time the employee begins the training. The employee does not accumulate annual or sick leave during the LWOP period, and the annual leave accrual rate will be calculated as though there had been no period of absence.~~

~~1007.12.4 Reinstatement Rights~~

- ~~A. When an employee is released from active duty, he or she shall be reinstated to the position vacated or an equivalent position for which he or she is qualified in the same division/office or its successor in interest.~~
- ~~B. 1. Employees performing active military service for fewer than thirty one days must report for re-employment on the first regularly scheduled workday within eight hours after discharge from military services.~~
- ~~2. Employees serving more than thirty (30) but less than 181 days must report within fourteen (14) days after discharge.~~
- ~~3. Those serving more than 180 days must report for reemployment within ninety days after discharge from military service.~~
- ~~C. In the case of an employee ordered to an initial period of active duty in a branch of the military reserves for training of not less than three consecutive months, these returning Reservists are entitled to reinstatement rights for a period of thirty one (31) days after release from active duty, subject to the same terms and conditions as returning veterans. In both cases, provisions stated in the Veteran's Re-Employment Rights Statute may extend this eligibility for re-employment rights.~~
- ~~D. The reinstated employee shall not lose any seniority rights with respect to leave accrual rates, pay increases, reduction in force policies, or other benefits and privileges of employment.~~

~~1007.12.5 Extended Reenlistments~~

~~Former employees returning to state service after military service, but who extended their enlistment or re-enlisted for additional military service beyond the initial period for more than a period of four (4) years (or five (5) years when re-enlistment was at the request of the military) will lose all seniority rights for reduction in force actions, or other benefits and privileges of employment and will be considered a re-hire.~~

~~1007.12.6 Emergency Situations~~

- ~~A. Permanent, full time employees who are called to active duty in emergency situations as declared by the Governor or President shall be granted leave with pay. The period of leave with pay will not exceed thirty working days. Periods beyond the thirty day limit may be charged to annual leave at the employee's option and, if necessary, to LWOP. Military leave for emergency situations is granted in addition to annual military leave for training purposes and normal annual leave.~~
- ~~B. If an employee's active duty in emergency situations begins in one calendar year and ends in the next calendar year and the employee is subsequently deployed due to an emergency situation, the employee is eligible for thirty days paid leave in the new calendar year. To be eligible for emergency active~~

~~military duty paid leave, the employee must be actively employed by DHS and submit a copy of military orders for each emergency deployment.~~

~~1007.12.7 Record Keeping for Military Leave~~

~~When an individual is called to active military service, personnel records shall reflect the following information:~~

- ~~A. The beginning date and expected return date.~~
- ~~B. Whether leave is for fifteen (15) working days for annual training, active duty for military service, active duty for specialized training and/or active duty for emergency situations as declared by the Governor or President of the United States.~~
- ~~C. Whether or not the employee has elected to use accrued annual leave or LWOP.~~

~~1007.12.8 Military Leave for Service Connected Disabilities~~

- ~~A. All DHS employees, who have been rated by the United States Department of Veterans Affairs (VA) to have incurred a military service connected disability and have been scheduled by the VA to be reexamined or treated for the disability shall be entitled to a leave of absence with pay for a period not to exceed six (6) days for that purpose during any one calendar year.~~
- ~~B. The employee shall be entitled to his or her regular salary during the time the employee is away from duty during the leave of absence. The leave of absence shall be in addition to the regular annual leave and sick leave. During a leave of absence, the employee preserves all rights, privileges, and benefits to which he or she has become entitled.~~
- ~~C. For purposes of entitlement to retirement benefits, the period of the leave of absence shall be deemed continuous service.~~
- ~~D. The state shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained.~~

~~1007.12.9 Originating Section Department Contact~~

~~\_\_\_\_\_ Office of Policy and Legal Services  
 \_\_\_\_\_ P.O. Box 1437 Slot WG3  
 \_\_\_\_\_ Little Rock, AR 72203-1437  
 \_\_\_\_\_ Telephone: 501-682-5835~~

**~~1007.13.0 EDUCATIONAL LEAVE~~**

~~See DHS Policy # 1048, Educational Leave and Assistance, for information.~~

~~1007.13.1 Originating Section Department Contact~~

~~Office of Finance & Administration  
Organizational Development & Training  
P.O. Box 1437 Slot W101  
Little Rock, AR 72203-1437  
Telephone: 501-682-5835~~

**~~1007.14.0 DISASTER SERVICE VOLUNTEER LEAVE~~**

~~1007.14.1 A DHS employee of a state agency, who is trained and certified as a disaster service volunteer by the American Red Cross, whose specialized disaster relief services are requested by the Red Cross in connection with a disaster (as defined in Ark. Code Ann. §12-75-103(2)) and who requests Disaster Service Volunteer Leave and obtains consent from his or her state agency director, may be granted leave from work with pay for not more than fifteen (15) working days in any twelve (12) month calendar year period to participate in specialized disaster relief, without loss of seniority, pay, annual leave, sick leave, compensatory time, or overtime wages.~~

~~1007.14.2 An employee shall be granted leave under this section at the employee's regular rate of pay for those regularly scheduled work hours during which the employee is absent from work.~~

~~1007.14.3 Leave under this act shall be granted only for disaster relief services occurring within the State of Arkansas or for disaster relief services occurring within states contiguous to Arkansas.~~

~~1007.14.4 An employee deemed to be on leave under this section shall not be deemed to be an employee of the State for the purposes of Workers' Compensation.~~

~~1007.14.5 A list of certified DHS employees, not to exceed 100 State participants at any one time shall be maintained by the American Red Cross with pertinent information provided to DHS.~~

~~1007.14.6 Originating Section Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437 Slot WG3  
Little Rock, AR 72203-1437  
Telephone: 501-682-5835~~

**~~1007.15.0 FAIR LABOR STANDARDS ACT COMPENSATORY TIME~~**~~1007.15.1 Non-Eligible Employee~~

~~Those employees classified as exempt are not eligible to earn FLSA compensatory time. Although exempt employees have defined work schedules, frequent deviations from those schedules are expected.~~

#### ~~1007.15.2 Eligible Employee~~

~~Only DHS employees who are non-exempt according to the provisions of DHS Policy 1031—Fair Labor Standards Act are eligible to earn FLSA compensatory time.~~

#### ~~1007.15.3 Accrual~~

- ~~A.—FLSA compensatory time will be earned at the rate of one and one half (1½) hours for each full hour worked in excess of the employee's regularly scheduled workweek. (See DHS Policy 1031, Fair Labor Standards Act.) Compensatory time is earned only if the employee has worked in excess of a 40 hour week, otherwise any overtime worked is considered straight time. (Those employees who are authorized to work the 8/80 Plan will earn compensatory time at a rate of one and one half (1½) hours for each full hour worked in excess of eight (8) hours per day or 80 hours per pay period, whichever is greater.)~~
- ~~B.—Compensatory time is earned when the supervisor has knowledge of the time worked. If a supervisor has knowledge of an employee working time over the regular schedule, has not specifically approved the time, yet does not stop the employee from working, the employee is eligible for compensatory time.~~
- ~~C.—It is management's responsibility to assure that employees do not engage in work activity that exceeds their regularly scheduled work hours or workweek without supervisory approval.~~
- ~~D.—It is the employee's responsibility to obtain prior supervisory approval before engaging in work exceeding his or her regularly scheduled work hours.~~
- ~~E.—Eligible employees may accrue FLSA compensatory time only when the supervisor finds that time worked in excess of normal work hours is necessary.~~
- ~~F.—Earned FLSA compensatory time must be recorded as a separate category from other leave categories and according to the Federal FLSA.~~
- ~~G.—The maximum FLSA compensatory time that may be accrued by any affected employee shall be 240 hours, except those engaged in public safety or emergency response activities (Security and Fire Protection). They may accrue 480 hours. Employees who have accrued the maximum 240 or 480 hours will be paid for all additional hours earned until their balances are reduced to the allowed number of hours.~~

#### ~~1007.15.4 Use of FLSA Compensatory Time~~

- ~~A. FLSA compensatory time will be deducted from the employee's accrued FLSA compensatory time in increments of not less than 15 minutes. This time may not be taken before it is earned.~~
- ~~B. A recent U.S. Supreme Court decision allows states to direct the use of FLSA compensatory time before use of annual leave. DHS employees with both earned FLSA compensatory time and earned regular annual leave will be given the option to select the type of leave they want to use. The employee may be required to propose a plan for using the two leaves. The supervisor, however, will have both the final authority to determine if the request will interfere with the work flow, and to direct the employee to use FLSA compensatory time when needed. Circumstances such as an employee's earned compensatory time or earned annual leave being close to the 240 hour limit may affect which should be used first.~~
- ~~C. An employee who has accrued the maximum number of compensatory hours shall be paid overtime compensation in cash for any additional overtime hours of work.~~
- ~~D. At the time of termination, lump sum payment of accrued FLSA compensatory time will be at a rate of not less than:~~
- ~~1. The average regular rate received by an employee during the last three (3) years of his or her employment or~~
  - ~~2. The final rate received by an employee, whichever is higher.~~
- ~~E. At the time of transfer from one (1) state agency/institution to another, all FLSA compensatory time is a liability of DHS and should be paid the employee upon transfer.~~

~~1007.15.5 Originating Section Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437 Slot Number WG3  
Little Rock, AR 72203-1437  
Telephone: 501-682-5835~~

**~~1007.16.0 HEALTHY EMPLOYEE LIFESTYLE PROGRAM LEAVE TIME~~**

~~Per Act 724 of 2005, DHS employees who participate in the Healthy Employee Lifestyle Program (HELP) can exchange earned points for up to three days leave per calendar year. Each participant's calendar year is established by going back 365 days from the date the employee started the program. Points can be redeemed in the following increments:~~

- ~~—600 points = 1 hour (up to 4 hours in a calendar year)~~
- ~~4,750 points = 1 day~~
- ~~5,320 points = 2 days~~
- ~~5,890 points = 3 days~~

~~1007.16.1 Employees wishing to utilize points for time off should print a redemption certificate, which will be numbered. The redemption certificate should be attached to a completed Employee Request for Leave. The leave code "HELP" should be entered under "Other" along with the increment of time the employee is requesting. Both forms should be submitted to the employee's supervisor for approval. Supervisors should verify that each numbered redemption certificate is only utilized once. A copy of the redemption certificate should be given to the division HELP Coordinator.~~

~~1007.16.2 Division timekeepers should enter HELP leave time on the weekly CAT2: Timesheet as "HELP." No quota will need to be set up nor will a quota be shown for HELP leave on the PT 50: Quota Overview screen. Supervisors and Time Specialists who will utilize PT 64, Attendance/Absence Data Overview, can monitor the use of HELP leave time:~~

~~1007.16.3 Originating Section Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437 Slot WG3  
Little Rock, AR 72203-1437  
Telephone: 501-682-5835~~

**~~1007.17 CHILDREN'S EDUCATION ACTIVITY LEAVE~~**

~~1007.17.1 Act 584 of 2011, codified at Ark. Code Ann. § 21-4-216, allows DHS employees an opportunity to participate in their children's education activities by granting eight hours of children's education activity leave per calendar year.~~

~~1007.17.2 Definitions~~

- ~~A. "Child" means a person enrolled in an educational program for pre-Kindergarten through grade 12 (preK-12) who is of the following relation to a state employee:~~
- ~~● natural child~~
  - ~~● adopted child~~
  - ~~● stepchild~~

- ~~foster child~~
- ~~grandchild~~
- ~~ward of the state employee by virtue of the state employee having been appointed the person's legal guardian or custodian~~
- ~~any other legal capacity where the employee is acting as a parent for the child~~
- ~~child includes a person who meets the above criteria, but is over eighteen years old and declared legally incompetent.~~

B. ~~“Educational activity” means any school sponsored activity~~

C. ~~“Educational activity” includes without limitation:~~

- ~~parent teacher conference~~
- ~~participation in school sponsored tutoring~~
- ~~participation in a school sponsored volunteer program~~
- ~~a field trip~~
- ~~a classroom program~~
- ~~a school committee meeting~~
- ~~an academic competition~~
- ~~assisting with athletic, music or theater programs~~

D. ~~“Prekindergarten” means an educational and child development program that is designed to prepare children who are at least three years of age for an academic kindergarten program.~~

~~1007.17.3 DHS employees are entitled to eight hours of leave during any one calendar year for the purpose of attending or assisting with the education activities of their child (as defined above). The minimum leave an employee may request is 15 minutes.~~

~~1007.17.4 The supervisor must approve the leave request before the leave may be taken. Leave shall be granted if the employee's time off will not interfere with the efficient operation of the office.~~

~~1007.17.5 Leave that is unused may not be carried over to the next calendar year and is not compensable to the employee at the time of separation (termination or retirement).~~

~~1007.17.6 The AASIS Absence Code for Children's Education Activity Leave is CEAL. CEAL is to be entered in the “Other” area on the Employee Request for Leave.~~

~~1007.17.7 Originating Section Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437 Slot WG3  
Little Rock, AR 72203-1437  
Telephone: 501-682-5835~~

~~1007.18.0 EMERGENCY PAID LEAVE~~

~~1007.18.1 The Governor issued Executive Order 08-09 on May 5, 2008, authorizing up to 40 hours of Emergency Paid Leave for those State employees who suffered loss of, or substantial damage to, their principle place of residence due to the severe weather conditions, including tornadoes, damaging winds, heavy rains and flooding that have plagued Arkansas since January 1, 2008.~~

~~1007.18.2 Such emergency leave shall be limited to those employees whose principal place of residence is located in a County that the Governor has declared a disaster area as a result of the weather conditions listed above.~~

~~1007.18.3 The Department of Human Services (DHS) shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from work.~~

~~1007.18.4 Affected employees who require additional time off beyond forty hours of Emergency Paid Leave may submit requests for annual leave under the rules in 1007.2, Annual Leave.~~

~~1007.18.5 Employees requesting leave to provide volunteer disaster assistance may be eligible for Disaster Service Volunteer Leave, in accordance with Policy 1007.14, Disaster Service Volunteer Leave.~~

~~1007.17.8 Originating Section, Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437 Slot WG3  
Little Rock, AR 72203-1437  
Telephone: 501-682-5835~~

~~1007.19.0 STATE EMPLOYEE ATTENDANCE AT RETIREMENT SEMINARS AND COUNSELING SESSIONS~~

~~1007.19.1 Employee attendance at APERS/ATRS retirement seminars will be treated as any other type of employee benefit presentation, provided those attending have at least a minimum of five years credited service in a state sponsored retirement system. Attendance at retirement seminars does NOT necessarily require employees to take any type of leave.~~

~~1007.19.2 Attendance at retirement seminars will be as follows:~~

~~A. Employees are allowed to attend a retirement seminar once every five years without the use of accrued leave.~~

~~B. Employees within five years of retirement are allowed to attend a retirement seminar once a year without the use of accrued leave.~~

~~C. Employees within one year of retirement or DROP are not required to use accrued leave to attend retirement seminars or scheduled sessions with retirement counselors.~~

~~1007.19.3 Employees must schedule the attendance so that their absence will not hinder the work of their agency. Appointments require prior approval from the employees' supervisor.~~

~~1007.19.4 Originating Section, Department Contact~~

~~Office of Policy and Legal Services  
P.O. Box 1437 Slot WG3  
Little Rock, AR 72203-1437  
Telephone: 501-682-5835~~

**~~1023.0.0 — WORKFORCE REDUCTION POLICY~~****~~1023.1.0. — Purpose and Scope~~**

~~A Reduction in Force is the least desirable method of solving staffing issues. Department of Human Services (DHS) division directors should examine alternatives to avoid a reduction in force. However, should a reduction be necessary, this Workforce Reduction Policy is to assist DHS in implementing department wide reductions in the workforce in an orderly fashion with the least possible impact on the Department and its employees. The decision regarding the number of employees and positions that will be affected depends on each individual division and the services provided to the citizens of Arkansas. Factors include, but are not necessarily limited to, the individual division's mission, the final budget reduction target for the Department, the availability of funds, and the strategic and organizational plan to address the necessary reductions. The Department Director shall consider positions providing services to the public and any regulatory and enforcement responsibilities as being critical to Department operations, unless the Director determines that DHS can maintain current levels of operations with less personnel and or locations.~~

**~~1023.2.0. — Employment Contract~~**

~~This Policy supersedes previous policy No. 1023, Reduction In Force, dated October 21, 1997. This policy does not constitute any employment contract or agreement, either expressed or implied, between DHS and its employees. This policy applies to all jobs except where specified by contract or federally mandated requirements. This policy is subject to change without notice, wholly or in part.~~

**~~1023.3.0 — Workforce Reduction Procedures~~**

~~1023.3.1 — Reductions in the workforce may be due to significant organizational structure changes, shortage of funds or work, abolishment of positions or duties, loss of functional responsibility, and/or the loss/non renewal of federal funding, grants or other special funds. In the workforce reduction decision making process, the DHS Director should be guided by agency priorities, resources, locations, and staffing to determine where reductions may be made that have the least impact on departmental operations.~~

~~1023.3.2 — If the Director determines that a workforce reduction is required, procedures that are uniform in nature and consistent in application shall be utilized. Prior to determining that a workforce reduction is necessary, DHS shall have considered other options such as hiring freezes, reducing work hours with proportionate pay cuts, assessing expected job attrition, job sharing, limiting travel and limiting capital outlay.~~

~~1023.3.3 — Each Division Director shall conduct an organizational analysis, which is designed to identify and classify as critical or non critical agency specific (1) programs, (2) locations of service delivery, and/or (3) positions. From this~~

analysis, programs, locations, and positions should be ranked in ascending order as follows:

1. ~~Non Critical:~~ ~~Not critical to agency operations~~
2. ~~Critical Low impact:~~ ~~Low impact on agency operations~~
3. ~~Critical Moderate Impact:~~ ~~Moderate impact agency operations~~
4. ~~Critical Severe Impact:~~ ~~Severe impact on agency operations~~
5. ~~Critical Extreme Impact:~~ ~~Extreme impact on agency operations~~

~~1023.3.4~~ Based on the results of the organizational analysis, the division directors shall eliminate or consolidate non-critical programs, locations, or positions. The employment of individuals occupying non-critical positions is to be terminated, as necessary. If additional reductions in the workforce are required, the determination as to the retention or separation of employees occupying positions deemed to be critical to the organization shall be considered in ascending order of the rankings established in Section II(A) and shall include utilization of the Retention Criteria for Critical Positions section of this policy. DHS shall establish an Oversight or Review Committee, as defined by the Department of Finance and Administration (DFA) Office of Personnel Management (OPM) Arkansas Performance Evaluation Plan Training Manual, to assure consistency among raters. Performance Evaluation scores from all raters should be statistically analyzed and compared with one another to determine any inconsistencies. Reports of committee findings are to be sent to the agency director and the Department of Finance and Administration, Office of Personnel Management.

~~1023.3.5~~ Employees occupying extra help, part time, intermittent, or temporary positions are to be deemed non-critical and are to be the first to be separated from state employment, with the exception of a condition where extra help, part time, intermittent, or temporary employees occupy positions operating as full time employees in a regular position, based on special language, or where such positions are being used to staff critical positions. Should such a condition exist, consideration should be given to the business operations of the Department and the services to be provided as a determining factor for retaining the position over an employee holding the status of a regular full time employee.

~~1023.3.6~~ Division directors are to give all employees thirty days advance written notification if it is determined that a workforce reduction will be implemented. Individual employees that will be outplaced should be given notice as soon as possible prior to separating them due to the workforce reduction. The division director shall give affected employees notice as soon as possible however, making that decision based upon maintaining the effective and secure operations of DHS. At the time of separation of employment, the division is to provide affected employees with information regarding the employee's outstanding leave balances, continuation of benefits and available outplacement assistance. Employees are to be allowed to collect their personal belongings at the time they are notified of their termination. Collection of belongings can be performed with or without supervision at the discretion of the division.

~~1023.3.7~~ All positions that have been targeted as workforce reduction positions shall be frozen and may not be back filled until additional funding is provided, as certified by the Chief Fiscal Officer of the State. Following implementation of a workforce reduction, vacant positions will be filled pursuant to the Special Re-Employment Consideration section of this policy. Consequences of the workforce reduction shall not be considered as disciplinary actions. If DHS implements a workforce reduction, it shall file a report with the Legislative Council and DFA OPM to include the job titles, programs and work units involved in the layoffs as per Act 1212 of 2003. A 'work unit' may be determined by location, program, funding source, etc.

#### ~~1023.4.0~~ Utilizing Retention Criteria

~~1023.4.1~~ If additional reductions are required after the elimination of non-critical positions, the determination as to the retention or separation of a particular position or employee occupying a position that is deemed to be critical to DHS operations should be based on a combined evaluation of the most recent performance evaluations and length of state service.

~~1023.4.2~~ If additional reductions are required after the elimination of non-critical positions, DHS shall rank, in ascending order as defined in Section II(A), all positions within DHS or geographic location or office. The DHS Director must determine the number of offices that will be considered as "one" geographic location/office for this internal ranking process. The determination as to the retention or separation of a particular employee occupying a position within a classification performing the same or similar job duties that is deemed to be critical to agency operations should be based on a location by location basis utilizing the Retention Criteria Calculation below.

#### ~~1023.5.0~~ Retention Criteria Calculation

~~1023.5.1~~ To provide uniform standards, the retention criteria points are to be scored and weighted as follows:

A. Length of state service

Award one point for every complete year of state service

**Note:** Arkansas Code Annotated §21-3-304(e)(2) requires an eligible military veteran's service in the armed forces to be considered as service with the agency.

B. Performance Evaluation

1. Rate the overall performance rating on each of the last three years as follows:

Unsatisfactory = 0

Satisfactory = 4

Above Average = 6

Exceeds standards = 8

2. Award points on three year\* average as follows:

No points below average of 4

4.00 — 5.32 = 70

5.33 — 6.66 = 80

6.67 — 7.99 = 90

8.0 — = 100

Multiply the sum of this category by a factor of .60

\* For employees with less than three performance evaluations, award a satisfactory overall rating for all non available years (for the purpose of standardizing PE calculations).

**Example 1: Using Organizational Analysis to determine elimination of a position.**

*An agency location/office has three Management Project Analysts and has to eliminate one position. Rank the MPAII utilizing the Section H(A) categories as you determine in the organizational analysis. You may have one MPAII as critical low impact, one MPAII as critical moderate impact, and one MPAII as critical severe impact. Thus, the first position to be reduced would be the critical low impact followed by the critical moderate impact, followed by the critical severe impact.*

**Example 2: Using Retention Criteria to determine elimination of a person.**

*An agency location/office has three Management Project Analysts that are determined to be level 3 Critical Moderate Impact. One position has to be eliminated. The retention criteria would be applied to determine which employee of the three would be eliminated.*

~~1023.5.2 — Employees occupying positions deemed to be critical to DHS operations shall be rated on the basis of the above retention criteria and without regard to the employees' race, color, religion, gender, age, national origin, disability, or political affiliation. The results of the employee rating process should be analyzed for potential adverse impact based on age, sex, and race. Employees on authorized leave of absence will be protected under this policy until such time they are eligible for return to work. If a tiebreaker in retention points is necessary, divisions are to use months and days of state service. If an additional tiebreaker is needed, the division should use any non discriminatory method deemed suitable as approved by OPM. An employee whose position is eliminated due to implementation of the workforce reduction policy shall not be permitted to displace (commonly referred to as "bumping") any other employee.~~

**1023.6.0 — Special Reemployment Consideration**

~~1023.6.1 — Prior to advertising any vacant position following a workforce reduction, DHS is to review the list of employees eligible for special reemployment consideration and conduct interviews with those employees whose experience and education meet the minimum qualification requirements of the vacancy. Divisions will be allowed to forego regular advertising requirements, as stated in Governor's Policy~~

Directive 8, should the interview result in selection of an employee who has been terminated due to a workforce reduction.

- ~~1023.6.2 — A list of employees eligible for special reemployment consideration will be maintained and made available by OPM and the Department of Workforce Services.~~
- ~~1023.6.3 — DHS employees affected by a workforce reduction are to receive special reemployment consideration pursuant to 1023.3.1. If the vacancy is not filled by an out placed employee and the division wishes to receive other applications for consideration, the vacancy must be posted on the official Arkansas employment website at <http://www.arstatejobs.com>.~~
- ~~1023.6.4 — If the affected employee declines an interview or job offer that is equal to or higher than the job classification, grade and salary held at the time of written notification of the workforce reduction, the job is comparable in scope of responsibility and duties as position previously held, and the job offered is within a reasonable commuting distance from the applicant's home, special reemployment consideration will be forfeited.~~
- ~~1023.6.5 — Special reemployment consideration will be extended for a period of twelve months from the date of termination. If affected employees decide to retire or apply for retirement after receiving an official written notice of the workforce reduction, special reemployment consideration will not be extended.~~
- ~~1023.6.6 — An employee who has established veteran's preference and is affected by the workforce reduction shall be eligible for reemployment within a period of time no less than the continuous period of his or her service in a department or agency, provided that he or she has been certified by the department or agency director as meeting the current minimum qualifications of the position to which he or she is being reemployed, in accordance with Ark. Code Ann. §21-3-305.~~

### ~~1023.7.0 — Dislocated Worker Program~~

- ~~1023.7.1 — Beginning a job search process is critical for all employees who have received written notification that they are to be affected by a workforce reduction. The Governor's Dislocated Worker Task Force will assist all such employees through existing programs and statewide facilities and will be the primary source of outplacement assistance for affected employees.~~
- ~~1023.7.2 — The Task Force conducts a Worker Assistance Workshop, attended by representatives of local and state agencies and affected workers to review the programs and assistance available to them. Services and needs discussed at the workshop include retraining and educational opportunities, unemployment insurance, social service programs, stress associated with unemployment, credit counseling, insurance needs, and tips on how to find a new job.~~
- ~~1023.7.3 — Other services available to dislocated workers include:~~
- ~~A. — Trade Adjustment Assistance and North American Freedom Trade Act (NFTA) benefits~~

- B. ~~Job Search Workshop~~
- C. ~~Self service Centers~~
- D. ~~Worker Assistance Workshops~~
- E. ~~Labor Management Adjustment Committees~~
- F. ~~Employment Security Department Office Support~~
- G. ~~Vacated Facilities Marketing~~
- H. ~~Education Fairs~~
- I. ~~Emergency Disaster Relief Centers~~
- J. ~~Job Fairs~~
- K. ~~Mobile Career Resource Centers~~

~~1023.7.4 — Outplacement services listed above will be made available to state workers affected by workforce reduction in remote/outlying areas either via the DWS office closest to the employee's work location or via the DWS/Workforce Ed Mobile Van.~~

~~1023.7.5 — DFA OPM will serve as support to the Governor's Dislocated Worker's Task Force. DHS shall provide OPM with information necessary to establish, update, and maintain a database of all employees affected by the workforce reduction.~~

#### ~~1023.8.0 — Outplacement Procedure Notification~~

~~1023.8.1 — If DHS implements a workforce reduction, it will provide OPM with information regarding the affected employees as soon as possible, but no later than 24 hours after employees have been notified, to include the following information:~~

<del>Employee name</del>	<del>Job Title</del>
<del>Personnel number</del>	<del>Position Number</del>
<del>Date of Termination</del>	<del>Home E-mail address</del>
<del>Home phone number</del>	

~~1023.8.2 — A form for reporting this information to OPM may be found at [www.state.ar.us/dfa/opm](http://www.state.ar.us/dfa/opm). The forms should be completed by DHS Human Resources and sent via e-mail to the attention of Don Lukas, OPM Research/Technical Manager, at [don.lukas@dfa.state.ar.us](mailto:don.lukas@dfa.state.ar.us). For problems accessing or transmitting the form, human resources managers may contact Mr. Lukas via e-mail or at (501) 682-1823.~~

~~1023.8.3 — After DHS notifies OPM and the employees affected by the workforce reduction, OPM will coordinate outplacement assistance with the Governor's Displaced Worker's Task Force. The Task Force will process unemployment claims on-site for eligible employees.~~

~~1023.8.4 — DHS will provide information to employees at the time of termination concerning their benefits coverage, contact information for inquiries, and information regarding the services available to them through the Governor's Displaced Worker's Task Force.~~

~~1023.8.5 — A model letter that may be used to give to the employee at the time of termination, an Outplacement & Re Employment Assistance handout, a Workforce Reduction Question & Answer document, and a Benefits Continuation Summary for Outplaced Employees are included with this policy as attachments and can also be accessed at [www.state.ar.us/dfa/opm](http://www.state.ar.us/dfa/opm).~~

### ~~1023.9.0 — Completing the State Application~~

~~1023.9.1 — Whether or not an employee terminated due to workforce reduction chooses to use the outplacement assistance center, the first and most important step for them, after learning of a state job vacancy, is to complete a State of Arkansas Employment Application. It is essential to provide detailed information regarding work history and education. Failure to complete the application in full detail may result in the employment application's not being forwarded to a hiring official. If assistance is needed to complete the employment application, human resources staff can provide guidance on how to best present credentials in order to maximize chances for employment. Employment applications may be supplemented with a resume, but all sections of the application should be completed with as much detail as possible. The employee should retain copies of the application for use in applying for future vacancies.~~

~~1023.9.2 — If assistance is needed to acquire dates and salaries for jobs held with the State of Arkansas, DHS Human Resources staff can provide the information. Agencies may contact OPM Classification and Compensation staff or OPM payroll staff for employee information, as necessary. Affected employees may want to review their personnel files as well. State policy allows employees to access their personnel files.~~

~~1023.9.3 — The State of Arkansas Employment Application form is available at <http://www.arstatejobs.com> and all Department of Workforce Services offices. The application may be completed on-line or in hard copy form and sent to the agency where the job vacancy exists.~~

~~1023.9.4 — Employees affected by the workforce reduction may also access comprehensive information regarding State government job vacancies at <http://www.Arstatejobs.com>. Job vacancy information is also available at all Department of Workforce Services local offices.~~

### ~~1023.10.0 — Current Benefits Available at Employment Separation due to Workforce Reduction~~

~~1023.10.1 — Annual Leave: DHS Policy No. 1007, DHS Leave Policy, contains specific provisions regarding payment at termination of employment for accrued, unused annual leave. All terminating employees are entitled to receive a lump sum distribution of such benefits, up to thirty days, inclusive of holidays and all accrued, unused, compensatory leave. An employee who receives a lump sum payment at termination of employment may not return to state employment until~~

~~the number of days for which he or she received additional compensation has expired.~~

- ~~1023.10.2 Sick Leave Incentive: DHS Policy No. 1092, Sick Leave Incentive Program, provides an incentive payment for portions of accrued, unused sick leave upon retirement. Employees affected by workforce reduction who are qualified for and choose to receive retirement benefits from a state supported retirement system are eligible for a sick leave incentive lump sum payment up to \$7,500. If an employee returns to state employment within six months following a termination of state employment that was a direct result of agency budgetary reasons or curtailment of work activities, accrued sick leave that was forfeited at termination of employment will be restored to the employee's credit.~~
- ~~1023.10.3 Unemployment Insurance Benefits: The Arkansas Department of Workforce Services is responsible for administration and eligibility determinations regarding unemployment insurance benefits. DHS employees separated due to workforce reduction are eligible to collect unemployment insurance benefits, provided they meet the normal eligibility requirements. Arkansas Department of Workforce Services personnel will assist each out placed employee in determining unemployment insurance benefit eligibility.~~
- ~~1023.10.4 Deferred Compensation Plan: Subject to the provisions of an employer's plan, affected employees may be able to roll over Arkansas Diamond Deferred Compensation Plan contributions to a new employer's plan. Also, upon termination of state employment, contributions may be withdrawn with no penalty. However, such withdrawals are subject to state and federal income taxes. CitiStreet at 1-866-271-3327 should be contacted for complete information.~~
- ~~1023.10.5 Employee Assistance Plan: StarEAP coverage will continue upon termination for those DHS employees who continue state sponsored health insurance coverage through COBRA. The StarEAP provides a confidential counseling service for employees that helps define problems affecting them personally and identifies appropriate resources to ease, and possibly to resolve personal crises. Information may be accessed at <http://www.corphealth.com> or by calling 1-866-378-1645.~~
- ~~1023.10.6 Retirement Benefits: For eligible employees, benefits are available through the Arkansas Public Employees Retirement System (1-800-682-7377) and/or the Arkansas Teacher Retirement System (1-800-666-2877). Complete information regarding benefits and eligibility may also be accessed at <http://www.apers.org> and <http://www.atrs.state.ar.us/>.~~

*Sample Employee RIF Notification Letter*

~~(DATE)~~

~~(NAME)~~

~~(TITLE)~~

~~(DEPARTMENT)~~

Dear ~~(Employee Name)~~

~~It has become necessary for the Department of Human Services to implement a workforce reduction due to (insert reason). Regrettably, your position has been identified as one that will be eliminated. Your termination date is effective as of (date). You currently have (# hours) of accrued vacation (and if applicable # hours of compensatory time) payable upon termination in a lump sum. You have (insert number) number years of state service. Therefore you (are/are not) eligible for severance pay in the amount of (insert amount if eligible), also payable in a lump sum upon termination.~~

~~Attached is information on Outplacement and Re-employment Assistance, a Benefits Continuation Summary, and a question and answer sheet. Human Resources Specialists are available to meet with you to answer any further questions that you might have concerning this process. You may contact (give agency contact names and numbers) should you need further assistance. Please be assured that our department will do all in its power to work with you, and I am available to answer any questions you may have.~~

Sincerely,

-

*Name of division director*

-

cc: Human Resources Manager/Specialist

***BENEFITS CONTINUATION SUMMARY  
FOR  
OUTPLACED EMPLOYEES***

**~~I. — LIFE INSURANCE — Conversion of USABLE basic and supplemental life insurance~~**

~~When employees terminate employment or otherwise become ineligible for the life insurance program with USABLE Life, he or she may convert his life insurance benefits to an individual policy. Dependent coverage may also be converted when an employee terminates or the dependent becomes ineligible. Important note: those terminated employees that are eligible to receive a retirement benefit may continue their health insurance through the retirement plan and therefore WILL NOT lose their life insurance. Those that elect coverage through COBRA will lose their life insurance and should follow the procedure outlined below if they are interested in continuing their life insurance benefits. Those that are terminated by one agency and rehired by another agency will have to notify the Department of Finance and Administration, Employee Benefits Division (EBD) that they have been rehired or their life coverage will stay terminated.~~

~~Life Insurance Conversion Procedure:~~

~~**If you did not receive a "Notice of Conversion Privilege for Group Life insurance" (Form CR-NOTICE) from your personnel office, a copy is available through the Employee Benefits Division and can also be found at <http://www.usablelife.com>. Written application for conversion must be made to USABLE Life within 30 days of termination. This form should be mailed to USABLE Life, P.O. Box 1650, Little Rock, AR 72203-1650. Phone # is (501) 378-5854 or toll free at 1-800-370-5854.**~~

~~Conversion will be to a life insurance policy subject to the terms of the conversion privileges described in the group master contract. This conversion policy will be issued without medical examination. The premium rate for the individual life policy will be based on the former employee's nearest birthday age. The new policy will become effective on the first day following the expiration of the thirty-day conversion period.~~

~~**USABLE Life is unable to make any exceptions for applications received after 30 days from termination date.**~~

**~~II. — VOLUNTARY PRODUCT — Policy Conversion~~**

~~Many voluntary product plans (i.e. disability, accident, cancer, etc.) allow conversion to an individual policy. Please contact the appropriate company for information about your options.~~

**~~III. — HEALTH INSURANCE~~**

~~If you carried health insurance while employed by the State, you have the option to continue that coverage. Your last date of coverage will be determined by your last date of employment as outlined below:~~

~~If your last day of employment falls within the *first pay period* of the month, then you will be refunded one paycheck worth of premium (because insurance premiums are collected a month ahead). Your regular insurance coverage will end on the last day of the month in which you were terminated. See next sections for continuation options.~~

~~If your last day of employment falls within the second pay period of the month, then your health insurance will continue to the end of the month following the month in which you were terminated. See next sections for continuation options.~~

### COBRA Continuation

~~You will receive a COBRA notification within 14 days of termination from a company named COMPLINK. You have 60 days to elect to continue your health insurance coverage. If you choose to continue, upon COMPLINK's receipt of your first premium, your insurance coverage will revert back to the date of your last day of coverage and there will be no gap in coverage. Please refer to the COBRA PREMIUM rate sheet for cost information. You are responsible for paying the COBRA premium on time every month and can continue this coverage for 18 months (COBRA rates attached).~~

-

~~If you choose to go on COBRA and then get back on retirement insurance, you will lose life insurance permanently (unless you convert as directed in the section above). In addition, you must exhaust the entire eighteen month COBRA without missing a payment before you are eligible to enroll in retirement insurance.~~

~~For current COBRA rates:~~

~~<http://dhsgold/oas/insurance/ASE%20COBRA%20rates%20effective%20May%201%20%202007.pdf>~~

-

### Continuation if eligible for a retirement benefit

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~~Employees who do not qualify for retirement benefits are only eligible to continue the health insurance coverage as a COBRA continuant (see COBRA section above).~~

-

~~If eligible for a retirement benefit from any of the retirement plans (APERS, ATRS, Judicial Retirement System and Arkansas Highway Retirement System), you can continue your health insurance through payroll deduction of premiums from your retirement check, or if your benefit is not enough to cover the premium, you can pay premiums directly to the Employee Benefits Division. If you did not receive a retirement packet from your agency, please contact your retirement plan or the Employee Benefits Division for assistance with benefit continuation.~~

### **IV. Section 125, FLEXIBLE SPENDING ACCOUNT Options** (Tax free medical care and dependent care savings accounts)

-

~~If you participated in either of these accounts and have an unclaimed balance in your account upon termination, you are still eligible to submit claims for reimbursement until your account is depleted. **Only claims that were incurred during your period of employment and for that**~~

~~tax year are eligible. You will not be reimbursed for claims incurred AFTER your termination date.~~

~~You will receive a COBRA notice from Fringe Benefits Management Company about your right to continue to contribute to the account but contributions after termination can only be made on an after tax basis. Continuation is voluntary.~~

#### ~~V. ARKANSAS DIAMOND DEFERRED COMPENSATION PLAN (457b) -- Options~~

~~A. Post employment you have 3 options:~~

- ~~1. If your account balance is less than \$5,000, you can either:~~
- ~~2. Take the money in cash, or~~
- ~~3. Roll over the balance to another plan or IRA.~~

~~B. If your account balance is greater than \$5,000, you can:~~

- ~~1. Leave your money in the Plan (distributions must begin once you reach age 70 1/2). Even though you are no longer eligible to make contributions, you will receive quarterly statements and still have the services of Citistreet and Stephens, Inc. at your disposal.~~
- ~~2. Take all or part of the money in cash,~~
- ~~3. Request installment payments,~~
- ~~4. Request an annuity, or~~
- ~~5. Roll over the balance to another plan like a 401(k), governmental 457(b), 403(b), or IRA.~~

~~C. You may contact the CitiStreet Call Center at 1-800-905-1833 to begin the process for any of the above options. The following Citistreet website also has helpful information about the plan and your account: <http://myplan.esplans.com>. Local Citistreet representatives are also available by calling the Arkansas office in Little Rock at 1-866-271-3327.~~

**~~If you have questions about benefit continuation post employment not addressed above, please contact: The Employee Benefits Division at 501-682-9656 or toll free at 1-877-815-1017. You may also visit our website at [www.accessarkansas.org/dfa/cbd](http://www.accessarkansas.org/dfa/cbd) or send an email to AskEBD@dfa.state.ar.us.~~**

***OUTPLACEMENT***  
***&***  
***RE-EMPLOYMENT ASSISTANCE***

**I. ~~Outplacement Assistance Center~~**

- ~~A. Beginning a job search process is critical for all employees who have received written notification that they are to be affected by a workforce reduction. Agency human resources staff and the Governor's Dislocated Worker Task Force will assist all such employees. The Governor's Dislocated Worker Task Force, through its existing programs and statewide facilities, will be the primary source of outplacement assistance for affected employees.~~
- ~~B. Outplacement services will also include:~~
- ~~1. Assistance with resume preparation~~
  - ~~2. Access to state job vacancies plus other job sites, e.g., America's Job Bank, etc.~~
  - ~~3. Referral to Workforce Centers skills assessment and re-employment plan~~
  - ~~4. Job Search Workshop~~
  - ~~5. Job search brochures and literature~~
- ~~C. Outplacement services listed above will be made available to state workers affected by workforce reduction in remote/outlying areas either via the DWS office closest to the employee's work location or via the DWS/Workforce Ed Mobile Van. Maps and listings of Department of Workforce Services locations may be obtained at the agency's website,~~
- ~~D. The Office of Personnel Management will serve as support to the Department of Workforce Services for this critical Outplacement Assistance Center. State agencies are to provide the Office of Personnel Management information necessary to establish, update, and maintain a database of all employees affected by the workforce reduction.~~

**II. ~~Special Reemployment Consideration~~**

- ~~A. Prior to advertising any vacant position following a workforce reduction, all agencies are to review the list of employees eligible for special reemployment consideration and conduct interviews with those employees whose experience and education meet the minimum qualification requirements of the vacancy. Agencies will be allowed to forego regular advertising requirements, as stated in Governor's Policy Directive 8, should the interview result in selection of an employee who has been terminated due to a workforce reduction.~~
- ~~B. A list of employees eligible for special reemployment consideration will be maintained and made available by the Office of Personnel Management and the Department of Workforce Services.~~

- C. ~~Within all state agencies, employees affected by a workforce reduction are to receive special reemployment consideration pursuant to Section IV(A). If the vacancy is not filled by an out placed employee and the agency wishes to receive other applications for consideration, the vacancy must be posted on the official Arkansas employment website at <http://www.arstatejobs.com>.~~
- D. ~~If the affected employee declines an interview or job offer that is equal to or higher than the job classification, grade and salary held at the time of written notification of the workforce reduction, the job is comparable in scope of responsibility and duties as position previously held, and the job offered is within a reasonable commuting distance from the applicant's home, special reemployment consideration will be forfeited.~~
- E. ~~Special reemployment consideration will be extended for a period of 12 months from the date of termination. If affected employees decide to retire or apply for retirement after receiving an official written notice of the workforce reduction, special reemployment consideration will not be extended.~~
- F. ~~An employee who has established veteran's preference and is affected by the workforce reduction shall be eligible for reemployment within a period of time no less than the continuous period of his or her service in a department or agency, provided that he or she has been certified by the department or agency director as meeting the current minimum qualifications of the position to which he or she is being reemployed. Arkansas Code Annotated §21-3-305.~~

### **III. ~~Completing the State Application~~**

- A. ~~Whether or not an employee terminated due to workforce reduction chooses to use the outplacement assistance center, the first and most important step for them, after learning of a state job vacancy, is to complete a State of Arkansas Employment Application. It is essential to provide detailed information regarding work history and education. Failure to complete the application in full detail may result in the employment application's not being forwarded to a hiring official. If assistance is needed to complete the employment application, agency human resources staff can provide guidance on how to best present credentials in order to maximize chances for employment. Employment applications may be supplemented with a resume, but all sections of the application should be completed with as much detail as possible. The employee should retain copies of the application for use in applying for future vacancies.~~
- B. ~~If assistance is needed to acquire dates and salaries for jobs held with the State of Arkansas, agency human resources staff can provide the information. Agencies may contact OPM Classification and Compensation staff or OPM payroll staff for employee information, as necessary. Affected employees may want to review their personnel files as well. State policy allows employees to access their personnel files. Agencies may require advance requests, in writing, to view a personnel file.~~
- C. ~~The State of Arkansas Employment Application form is available at <http://www.arstatejobs.com> and all Department of Workforce Services offices. The application may be completed on line or in hard copy form and sent to the agency where the job vacancy exists.~~

~~D. Employees affected by the workforce reduction may also access comprehensive information regarding State government job vacancies at <http://www.arstatejobs.com>. Job vacancy information is also available at all Department of Workforce Services local offices.~~

## WORKFORCE REDUCTION Q&A

~~Q. — I interviewed for a position that is a lower level position in the same classification. Do I have to be retested before being considered for the lower level position?~~

~~A. — For example, if you were an Administrative Assistant II and are interviewing for an Administrative I position, no testing is required unless the testing is skills testing for which the employee has not been previously tested.~~

~~Q. — My agency only counted my employment with their agency as “state service” and I had worked at another agency prior to this one. Why can’t my total service with both agencies be considered?~~

~~A. — State service is defined as cumulative years of service, which would include eligible service with all state agencies for which you have worked, plus military service as defined in Arkansas Code Annotated § 21-3-304(e)(2).~~

~~Q. — If I return to State employment after having received a Lump Sum Payment, does that have to be repaid to the State?~~

~~A. — When an employee terminates and returns to State service within two pay periods either within the same agency/institution or between agencies/institutions, both sick and annual leave may be reinstated subject to the following:~~

~~1. — An employee receiving lump sum payment for annual leave upon termination and who is subsequently rehired **may** “buy” back the annual leave by re-paying the lump sum payment in it’s entirety to the agency that issued the payment, on or before the day of re-employment. However, if the employee returns to the State’s workforce prior to the number of days for which annual leave was paid, repayment **must** occur for the number of days that have **not** elapsed.~~

~~2. — An employee who received a lump sum payment for annual leave and who elects not to “buy” back the annual leave may **not** be re-employed in any agency/institution until the number of work days for which annual leave was paid has elapsed.~~

~~3. — An employee re-hired within six months after having been laid-off due to budgetary reasons is entitled to restoration of accrued sick leave.~~

**~~Q. Do I have to take my lump sum payment for annual leave at the time of my termination?~~**

~~A. An out placed employee may choose to waive receipt of the lump sum payment for up to three months while actively pursuing employment with another state agency. However, the employee may receive the lump sum payment at anytime during that period should he/she wish to do so.~~

**~~Q. If I return to State employment, how will my length of service be calculated for the purpose of determining my leave accrual rate?~~**

~~A. Change of positions in the annual leave schedule shall be determined on the basis of completed years of service. Effective July 1, 1975, seniority for reinstated employees will be brought forward in completed years of service only." Service accrued prior to July 1, 1975, will be established in completed years and months of service.~~

**~~Q. If I return to State employment and my Career Service Recognition Payment (CSRP) date was reached during my absence due to a Reduction in Force, will I be eligible to receive the missed CSRP upon reinstatement?~~**

~~A. Upon reinstatement into the State's workforce, your eligibility for your missed CSRP will be delayed for a like number of days that you were out of the State's workforce up to a maximum of six (6) months.~~

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**~~Q. What will happen to my benefits now that I am terminated?~~**

~~A. Out placed employees should have received a document titled Benefits Continuation Information from their agency upon notification of termination. If you did not receive this document please contact your agency Human Resource department for a copy. Copies may also be obtained from the Outplacement Center or may be found at [www.state.ar.us/dfa/opm](http://www.state.ar.us/dfa/opm).~~

**1084.0.0 — DHS EMPLOYEE DISCIPLINE POLICY: CONDUCT/PERFORMANCE**

- 1084.0.1 — All Department of Human Services (DHS) employees are expected to perform their jobs honorably, professionally, competently, and diligently, in compliance with DHS policies. Employees are also expected to perform their jobs and communicate with the public, clients, and other employees, in a manner that supports the intent of our DHS Mission/Vision/Beliefs and our agency's values of Compassion, Courage, Respect, Integrity, and Trust. When in doubt about the meaning or intent of this or any other policy or applicable rules or laws, employees should seek guidance from their immediate supervisors or others designated by the employees' division or office.
- 1084.0.2 — Many of the terms; used to describe expected conduct and performance require no definition or explanation, for example, honesty and dependability. For some other terms, clarification may be beneficial. This policy attempts to describe expected employee traits in understandable terms; however, there is no attempt in this or other DHS policies to catalogue each specific behavior (meaning act or omission) that may warrant discipline.
- 1084.0.3 — Each employee has a duty to read and understand this policy and other DHS rules and policies applicable to the employee. (See DHS Policies on DHS SharePoint)
- 1084.0.4 — Only supervisors who have completed supervisor's training as mandated in Executive Order 86-1, Executive Order 93-1, and Executive Order 94-7 and Governor's Policy Directives are allowed to take disciplinary action against an employee in accordance with this DHS policy.

**1084.1 — Disclaimer**

This policy creates no property interest or expectancy in employment, nor does it alter the employment at will doctrine.

The procedures described in this policy are mandatory and the conduct and performance expectations are minimum requirements for all employees. However, nothing in this policy limits the establishment of workplace conduct or performance standards that are more specific, more rigorous, or both.

This policy is subordinate to federal laws and regulations, and to the Arkansas Code. For example, provisions in the Arkansas Code may disqualify a person from employment regardless of whether the person is or would be subject to discipline under this policy.

**1084.2 — Definitions**

- 1084.2.1 — Business Day — Each weekday except official Arkansas State government holidays designated by Executive Proclamation and Ark. Code Ann. § 1-5-101 as follows:

(a) — New Year's Day — January 1st

- ~~(b) Dr. Martin Luther King Jr.'s and Robert E. Lee's Birthday—3rd Monday in January~~
- ~~(c) George Washington's Birthday and Daisy Gatson Bates Day—3rd Monday in February~~
- ~~(d) Memorial Day—Last Monday in May~~
- ~~(e) Independence Day—July 4th~~
- ~~(f) Labor Day—1st Monday in September~~
- ~~(g) Veterans Day—November 11th~~
- ~~(h) Thanksgiving Day—4th Thursday in November~~
- ~~(i) Christmas Eve—December 24th~~
- ~~(j) Christmas Day—December 25th~~
- ~~(k) An Employee's Birthday—An employee is granted one (1) holiday to observe his or her birthday.~~
- ~~(l) A Holiday falling on a Saturday will be observed on the preceding Friday. A holiday falling on a Sunday will be observed on the succeeding Monday.~~

~~1084.2.2 Disciplinary Actions~~

- ~~1. Probation for the minimum amount of time necessary for a qualified and diligent employee to make satisfactory performance/conduct improvement, but no longer than six (6) months. Discipline Level (C)  
(Disciplinary probation should not be confused with new hire probation, see DHS Employee Grievance/Mediation Policy 1086.2.1 (B).)~~
- ~~2. Written Caution or Written Warning. Discipline Level (C)~~
- ~~3. Suspension without pay. Discipline Level (B) Notes: Under the Fair Labor Standards Act, special rules apply to the suspension without pay of exempt employees. An exempt employee may be suspended for one or more days for serious misconduct such as infractions of workplace conduct rules prohibiting sexual harassment, workplace violence or drug or alcohol use, and violations of state or federal laws. All other suspensions without pay of exempt employees, including suspension for performance and attendance issues, must be for at least five (5) consecutive work days. No suspension of any employee may exceed thirty (30) days without Agency Director approval.~~
- ~~4. Demotion—reduction in salary, grade, or both. Discipline Level (B)~~
- ~~5. Termination of employment. Discipline Level (A) Note: Divisions will consult with Office of Chief Counsel (OCC) when termination is being considered.~~

~~Documentation: All discipline shall be administered in writing. Records of all disciplinary actions must be permanently retained in the employee's Personnel File.~~

~~1084.2.3 Discipline—A sanction to obtain employee compliance or affect the suspension without pay or termination of an employee.~~

~~1084.2.4 Employee—For purposes of this rule, employee means any person, whether compensated or a volunteer, who performs any function administered or supervised by DHS, not including any independent contractor or an employee of any independent contractor.~~

~~1084.2.5 Employee Assistance Program (EAP) — An EAP is a comprehensive resource for defining approaches and solutions to life’s stressors. Employees, their spouses and dependents may access the EAP to help them deal with a variety of personal concerns. Managers and Supervisors may use EAP for personal issues, professional issues, or both.~~

~~1084.2.6 Pre Disciplinary Checklist — A checklist for supervisors to use in advance of administering discipline. (See Attachment B)~~

~~1084.2.7 Pre Disciplinary Consultation — One or more discussion(s) between the supervisor and designated division human resource personnel regarding the suspected or alleged conduct/performance and the related disciplinary implications. The main purpose of the pre-disciplinary consultation is to assure that the supervisor understands the controlling policies and has the information needed to decide whether to convene a pre-disciplinary staffing. Pre-disciplinary consultation(s) shall occur before the supervisor informs the employee of the suspected or alleged misconduct/poor performance.~~

~~1084.2.8 Pre Disciplinary Staffing —~~

~~Purpose: A meeting to review information regarding an employee’s behavior (including conduct, performance and compliance) and decide:~~

- ~~1. Whether documented or observed behavior warrants the level of discipline under consideration and complies with all relevant supervisory obligations; and~~
- ~~2. Whether the supervisor should convene an employee disciplinary meeting.~~

~~When required: A pre-disciplinary staffing is required before administering Discipline Level (A) or (B) and is encouraged before administering Discipline Level (C).~~

~~Participants shall be limited to the following:~~

- ~~1. Mandatory: The employee’s direct or a higher level supervisor and a designated division personnel representative.~~
- ~~2. Discretionary: Upon request a representative of OFA/Human Resources, the Office of Chief Counsel or both.~~

~~Documentation:~~

~~The supervisor shall make a written record noting the staffing date and time, identifying the staffing participants, and summarizing all decisions made during the staffing. The supervisor shall retain the note in his/her files.~~

~~1084.2.9 Probation — A trial period in which an employee’s suitability for the position is tested. A probationary employee who engages in behavior warranting discipline or~~

~~whose performance is not satisfactory by the end of the probation period is not suitable for the position.~~

~~1084.2.10 Property — Real and personal property including funds or the creation of an obligation to pay funds.~~

~~1084.2.11 Severity of Discipline — The level of discipline recommended in 1084.2.2 is the minimum that may be applied. Discipline may be set at any higher level, including Discipline Level (A) based upon:~~

- ~~1. — The nature and extent of the non-compliance.~~
- ~~2. — The impact of the non-compliance on, for example, department clients, other state employees, or DHS services, operations, or funding.~~
- ~~3. — All previous disciplinary actions, non-compliance and poor/unsatisfactory performance. Neither a history of satisfactory or higher performance ratings nor the absence of previous discipline are mitigating factors or defenses to the discipline administration.~~

~~1084.2.12 Suspension from duty pending investigation — Upon having reasonable cause to suspect that an employee may jeopardize: (1) the health or safety of any person; or (2) the integrity of DHS or a division thereof, a person in the employee's supervisory chain may immediately relieve the employee from duty pending an investigation to be completed as provided in this rule. Suspension from duty pending investigation is with full pay and benefits.~~

~~1084.2.13 Technical Error — An error that does not alter the outcome is not grounds for overturning the discipline. That is, if the error does not prevent establishing the employee's behavior by a preponderance of the evidence and the behavior warrants the discipline imposed, then the error is technical. For example, missing a discipline processing deadline is not a reason to excuse an employee's misconduct/poor performance, but rather, is a performance issue for the responsible supervisor.~~

### ~~1084.3 — Behavior Expectations~~

~~In addition to the expectations set forth below, please refer to DHS Policies found on DHS SharePoint, as well as all applicable workplace rules, including the workplace rules contained in Attachment (A) — Offenses that Violate Minimum Behavior Standards.~~

~~1084.3.1 Integrity and Honesty — DHS does not tolerate deceptive behavior including, without limitation, misstatements of fact, failure to state complete facts, or fraud. Deceptive behavior is presumed to be a Discipline Level (A) violation; however, that presumption may be rebutted, and a lower level of discipline administered, if all of the following conditions are met:~~

1. ~~The violation is an isolated occurrence and does not suggest that the employee is untrustworthy;~~
2. ~~The violation did not adversely impact any DHS client, any other state employee, or any DHS service, operation, or funds;~~
3. ~~The violation did not involve any abuse of official authority; and~~
4. ~~The violation did not jeopardize the health or safety of any person.~~

1084.3.2 ~~Compliance~~ — Employees must comply with workplace policies, rules and all job-related standards, standard practices, and requirements, including, without limitation, laws (including traffic laws), rules, regulations, judicial and administrative decisions, agency interpretations, and all reasonable work-related instructions. Minimum Discipline Level (C)

~~Supervisors have the additional compliance obligation of invoking this and other DHS policies when necessary to enforce conduct and performance expectations.~~

~~Some examples of non-compliance include:~~

1. ~~Violation of a criminal law is non-compliance if it occurs on DHS property or while on duty, regardless of whether the criminal law is job-related. For purposes of this policy, a violation of criminal law may be established by a preponderance of the evidence.~~
2. ~~Conviction of a crime is non-compliance if one or more elements of the crime is/are relevant to the employee's behavior standards, job duties, or both. For example, a conviction for fraud establishes that the employee lacks integrity and honesty.~~
3. ~~Misconduct or unsatisfactory performance that relates to the employee's workplace behavior standards, job duties, or both. Non-compliance includes off-the-job behavior if the behavior is such that a reasonable supervisor could conclude that continuing the employee in the position without correction could impair DHS operations or objectives, or expose DHS to liability.~~

1084.3.3 ~~Teamwork~~ — Cooperative effort to achieve the goals of the department or work unit is imperative. Minimum Discipline Level (C)

1084.3.4 ~~Responsibility and Dependability~~ — This category includes, without limitation, behavior traits such as reliable and timely attendance; willingness when necessary to perform tasks that would not ordinarily be the employee's responsibility; follow-through and timely completion of assigned tasks. Minimum Discipline Level (C)

1084.3.5 ~~Diligent and Competent Performance~~ — Attentive and persistent attention to job duties exercising the care that a very prudent person would take in connection with his or her own concerns; high quality work product; sound decision-making.

~~Minimum Discipline Level (C)~~

~~1084.3.6 — **Professionalism** — Tactful, discreet, and courteous behavior, even when provoked, demonstrating competence, compassion, and tolerance that does not belittle the skills, beliefs, or teachings of others and brings credit to DHS.~~

~~Minimum Discipline Level (C)~~

~~1084.3.7 — Supplemental List of Offenses and Level of Discipline see “Attachment A”.~~

**1084.4 — Removal from Duty Assignment Pending Investigation:**

~~1084.4.1 — Upon having reasonable cause to suspect that an employee may jeopardize the health or safety of any person, or the integrity of DHS, a person in the employee’s supervisory chain may immediately relieve the employee from regularly assigned duty pending an investigation to be completed as provided in this policy.~~

~~1084.4.2 — The employee shall remain off regularly assigned duty until the final administrative resolution of discipline, a decision is made not to discipline the employee, or a decision is made to discipline the employee at the written caution or written warning level.~~

~~1084.4.3 — If feasible, the employee shall temporarily assume other duties where the employee does not jeopardize the health or safety of any person or the integrity or public image of DHS. If such temporary assignment is not feasible, the employee shall be relieved of all duty.~~

~~1084.4.4 — Employees relieved of regularly assigned or all duties are on call for purposes of investigating the employee’s conduct/performance.~~

~~1084.4.5 — Removal from regularly assigned or all duty pending investigation is with full pay and benefits.~~

**1084.5 — Disciplinary Investigation Checklist**

~~Complete the (DHS 2813), Disciplinary Investigation Checklist, after considering the checklist factors the supervisor should document his or her findings on the Notice of Disciplinary Action (DHS 1173) and select level of discipline proportional to the employee’s behavior.~~

**1084.6 — Administering Discipline**

~~A. — The supervisor has the burden of establishing the misconduct by the greater weight of evidence. The greater weight of evidence is not necessarily established by the greater number of witnesses testifying to any fact or state of facts. It is the evidence which, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. Facts may be established by circumstantial evidence when the existence of the fact can reasonably be inferred from other facts proved.~~

- ~~B. All deadlines stated below are calculated from the date the supervisor becomes aware of a possible conduct violation. Exception: Occasionally information, findings, and expert opinions (“information”) from one or more sources outside DHS is necessary to decide whether to administer discipline, to decide the level of discipline, or both. For example, information from the State Crime Lab, the coroner, or law enforcement agencies may be necessary to determine if a person died of natural causes or as a consequence of an employee’s neglect of duty. Such information rarely is available on or before the 12<sup>th</sup> business day. When necessary information is not available from an outside source in time to follow the deadlines in this policy: 1) the supervisor must make diligent efforts to obtain the information; and 2) the pre-discipline staffing is not required until three (3) business days after receiving the information from the outside sources. Once the pre-discipline staffing is held, the deadlines for post-staffing events apply as stated below.~~
- ~~C. The supervisor shall engage in a pre-disciplinary consultation within five (5) business days.~~
- ~~D. The supervisor shall consider information within his or her personal knowledge, and shall gather such additional information as necessary to decide if the misconduct occurred, whether discipline is required and the level of discipline.~~
- ~~E. The supervisor and employee will meet within five (5) business days of the supervisor’s determination that disciplinary action may be warranted. At the meeting, the supervisor shall inform the employee of the conduct/performance issues and give the employee a reasonable opportunity to explain and provide documentation to establish that disciplinary action is not warranted. The supervisor shall inform the employee of deadlines set in this policy in order that the employee may submit explanations and documentation in time to be considered before discipline is administered.~~
- ~~F. If an employee resigns at any time after an investigation begins but before discipline is administered, the investigation shall continue to the point necessary to determine if the employee would be discharged if still employed and whether the employee jeopardized the health or safety of any person or the integrity or public image DHS.~~
- ~~G. When considering disciplinary action of Level A or B, the pre-disciplinary staffing shall be held as soon as practicable and no later than the 12<sup>th</sup> business day.~~
- ~~H. Employees must be notified of the disciplinary action using DHS-1173, Notice of Disciplinary Action. If the employee refuses to sign the DHS-1173, another employee, preferably an employee who is not a subordinate of the disciplining supervisor should witness.~~

## 016.14

- I. ~~A division human resource/personnel officer, or other division designee, must also review the DHS 1161 form in all cases of termination, to assure that correct termination code and re-hire status codes are placed into personnel records.~~
- J. ~~Delivery or attempted delivery of discipline to the employee must be made within seventeen (17) business days. The following actions should be taken:~~
  - 1. ~~The notice of disciplinary action should be hand-delivered to the person at the supervisor's work location or the employee's work location, if possible.~~
  - 2. ~~If unavailable, employee must be notified by certified mail and the return receipt is required.~~
  - 3. ~~If the certified mail is returned as unclaimed, the notice of disciplinary action shall be sent by regular mail to the employee's last known address.~~
- K. ~~Persons, who resign and are subsequently determined ineligible for rehire, either for two (2) years or permanently, shall be notified of the decision in the same manner as provided in this rule for notification of discipline. If the person was eligible to file grievances as of the last day of DHS employment, the person may file a grievance to object to the decision. For purposes of grievance processing, the notice of rehire ineligibility shall be deemed to be a notice of discipline.~~

### **1084.7 — Eligibility for Re-Employment**

- A. ~~Persons discharged as discipline for violation(s) of this policy are ineligible for re-employment for two (2) years unless permanently disqualified under §1084.7.C.~~
- B. ~~Persons who would have been discharged as discipline for violation of this policy, but resigned before receiving disciplinary action, are ineligible for re-employment for two (2) years unless permanently disqualified under § 1084.7.C.~~
- C. ~~Persons disqualified from re-employment under § 1084.7.A or B are permanently disqualified from re-employment if any one of the following conditions are met:~~
  - 1. ~~Employee's violation(s) jeopardized the health or safety of any person.~~
  - 2. ~~Employee's violation(s) jeopardized the integrity or public image of DHS.~~
  - 3. ~~Discipline was or would have been termination for the first offense.~~

4. ~~After investigation it is determined that the employee engaged in work-related sexual misconduct or sexual harassment.~~
5. ~~After investigation it is determined that the employee engaged in work-related discrimination on the basis of race, age, gender, color, religion, or national origin.~~

D. ~~Employees of DHS-operated facilities (Human Development Centers, State Hospital, Arkansas Health Center) who are terminated are eligible for reinstatement into the facility's next available position of the same title and class code if all the following conditions are met:~~

1. ~~The termination resulted solely from allegations that the employee abused or neglected a patient or resident;~~
2. ~~The Office of Long Term Care, agency, or office authorized to make a determination of maltreatment made a finding that the employee did not neglect or abuse a resident, and the finding is final, that is, no additional appeals exist or the time to file a request for reconsideration or further appeal has expired; and~~
3. ~~The employing Division determines that the employee is not subject to discipline for any other reason.~~

~~1084.7.1 Employees who receive a suspension without pay or disciplinary demotion may not apply for any other DHS positions within six (6) months after the demotion, or after the end of the suspension.~~

**~~1084.8 Effective Date of Disciplinary Action~~**

~~All discipline is effective the date the final decision to discipline is made.~~

**~~1084.9 Grievance Policy/Procedures~~**

~~Following the imposition of disciplinary action, an employee has five (5) working days from the date of notification of the disciplinary action to submit a grievance statement to the Employee Relations Office (ERO). (Reference DHS Grievance Policy #1086)~~

**~~1084.10 Conflicting Policies Superseded~~**

~~This rule supersedes DHS 1084, Employee Discipline, dated April 15, 2004 and DHS 1085 Minimum Conduct Standards, dated August 12, 2005 and any existing policies or specific sections of existing policies that conflict with the terms of this policy.~~

**~~1084.11 Reference to Other DHS Policies:~~**

~~Resignation/Termination #1049  
Ethical Standards for DHS Employees #1081  
Performance Evaluation #1093  
DHS Mediation/Grievance #1086  
Equal Opportunity/Affirmative Action Policy #1009  
Employment Disqualification: Criminal and Maltreatment History Checks #1080  
DHS Employee Drug and Alcohol Prevention #1087  
Mitigation of Violations of Privacy Rights #4004  
Uses and Disclosures of Client or Participant Information #4009  
Sexual Harassment Policy #1038~~

**1084.12 — Originating Section/Department Contact**

~~Office of Chief Counsel  
P.O. Box 1437/Slot Number S260  
Little Rock, AR 72203-1437  
Telephone: 682-8934~~

**Replacement Notation:** ~~This rule replaces DHS Policy 1084 dated June 1, 2010.~~

**ATTACHMENT A****OFFENSES THAT VIOLATE MINIMUM BEHAVIOR STANDARDS**

- ~~I. This section supplements the behavior expectations established in 1084.3 and any other workplace rule established by DHS or any DHS division, office or unit. The behavior described below is misconduct and warrants at least the minimum disciplinary level for a first offense:~~
- ~~1. Possessing any weapon or explosive on DHS or customer property (Level A).~~
  - ~~2. Abuse of official authority (Level A).~~
  - ~~3. Employee's violation(s) involved fighting or threat of violence (Level A).~~
  - ~~4. Failing or refusing to cooperate in a DHS investigation. An employee may refuse to answer a question on the basis that the answer would expose the employee to criminal violation; however, the investigator, supervisor, or other decision maker may consider and draw inferences from the employee's failure or refusal to answer. Investigations may include polygraph examinations (Level A).~~
  - ~~5. Possession, use, sale, distribution of "or impairment by" alcohol or any drugs, other than properly prescribed drugs or over the counter drugs (Level B).~~
  - ~~6. Losing or causing damage to DHS property intentionally (Level B) or by neglect (Level C).~~
  - ~~7. Accessing or using DHS data or information without authority (Level C).~~
  - ~~8. Selling or attempting to sell any good or service while on duty (Level C).~~
  - ~~9. Failing to report job related personal injury, accident or property damage to the employee's supervisor, regardless of whether the supervisor knows of the occurrence and regardless of the reason for the occurrence (Level C).~~
  - ~~10. Gambling while on duty or on DHS or customer property (Level C).~~
  - ~~11. Failing to observe traffic laws or failing to report traffic violations received while on duty or operating a DHS vehicle (Level C).~~
  - ~~12. Possession, use or transfer of DHS Property without authorization (Level C).~~

~~13. Using tobacco in any DHS motor vehicle or building owned or occupied by DHS or within 25 feet of the entrance to any such building except in designated smoking areas (Level C).~~

~~**II.** The above offenses violate minimum standards of conduct and are contrary to the best interests of DHS, its customers and employees. Depending on the severity of the offense, the frequency of unrelated offenses, the employee's overall work record, and other relevant factors, the department may elect to implement any level of disciplinary action up to and including immediate termination.~~

~~**III.** The above violations are examples of types of unacceptable conduct. Unacceptable conduct will result in discipline up to and including immediate termination. These violations are not all inclusive, however, and employees who engage in any type of conduct which may be injurious to the Department, or which interferes with the efficient operations, damages the reputation of DHS, or interferes with the Department's ability to serve customers and the public, will be subject to disciplinary action up to and including immediate termination.~~

~~**IV.** The previous list is intended to be representative of the types of activities that may result in disciplinary action. It is not intended to be comprehensive and does not alter the employment at will relationship between the employee and DHS.~~

**ATTACHMENT B****DISCIPLINARY INVESTIGATION CHECKLIST**

~~THE PURPOSE OF THIS QUESTIONNAIRE IS TO REMIND SUPERVISORS OF KEY STEPS / CONSIDERATIONS IN THE DISCIPLINARY PROCESS BEFORE A SUPERVISOR OR MANAGER RECOMMENDS OR TAKES DISCIPLINARY ACTION.~~

~~THE SUPERVISOR OR MANAGER MUST COMPLETE EACH QUESTION BY PLACING A CHECK MARK ON EITHER THE "YES" OR "NO" BOX.~~

	YES	NO
1. — <del>Has the employee behaved/performed in a manner that does not comply with a DHS rule, policy or standard?</del>	<input type="checkbox"/>	<input type="checkbox"/>
2. — <del>Are the facts established by observation, documentation, or both?</del>	<input type="checkbox"/>	<input type="checkbox"/>
3. — <del>Was the employee informed of the issues and given an opportunity to explain why discipline is not warranted?</del>	<input type="checkbox"/>	<input type="checkbox"/>
4. — <del>Did you consider the factors for determining the severity of discipline?</del>	<input type="checkbox"/>	<input type="checkbox"/>
5. — <del>To your knowledge, have similarly situated employees received similar discipline?</del>	<input type="checkbox"/>	<input type="checkbox"/>
6. — <del>Were there one or more pre-discipline consultations?</del>	<input type="checkbox"/>	<input type="checkbox"/>
7. — <del>If the discipline is level A or B, was there a pre-disciplinary staffing meeting?</del>	<input type="checkbox"/>	<input type="checkbox"/>

~~IF THE SUPERVISOR OR MANAGER ANSWERED "NO" TO MORE THAN TWO QUESTIONS AND STILL WISHES TO DISCIPLINE THE EMPLOYEE, THE SUPERVISOR OR MANAGER SHOULD CONTACT THE OFFICE OF CHIEF COUNSEL TO DISCUSS THE MATTER.~~

\_\_\_\_\_  
Signature of Supervisor  
DHS-2813

\_\_\_\_\_  
AASIS Personnel No.

\_\_\_\_\_  
Date

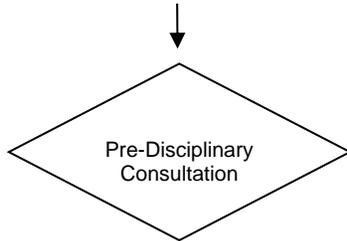
Effective Date: August 21, 2012

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~~ATTACHMENT C~~

# Disciplinary Primary Flow Chart

Date the supervisor becomes aware of a possible conduct/performance violation



No



End Process

Yes



Within five (5) days;  
Conduct any needed investigation:  
Inform the employee of the alleged misconduct and allow a reasonable opportunity for the employee to explain behavior, rebut allegations, or both. Employee may submit supporting documentation.

No



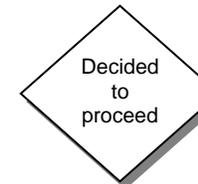
Unable to contact witnesses or obtain documents needed to complete investigation within five (5) additional days. (Total of 10 days)  
Decide whether to proceed

Yes



Pre-discipline staffing as soon as possible, no later than twelve (12) days from the date the supervisor became aware of the possible conduct violation.

Yes

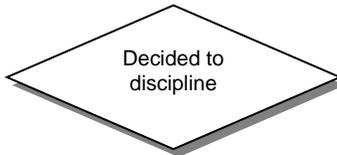


No



End Process

Yes



No



End Process

Yes



Informed employee in person or by mail within seventeen (17) days from the date the supervisor became aware of the possible conduct violation.

**1086.0.0 — DHS EMPLOYEE GRIEVANCE/MEDIATION POLICY**

(Gov's Proclamations EO 86-1, 7-16-85 & EO93-01, 7-1-93)

~~1086.0.1 — This policy establishes procedures for resolving workplace disputes and disciplinary issues.~~

~~1086.0.2 — Nothing in these rules and regulations shall abrogate the employment at will relationship between the Department of Human Services (DHS) and its employees. Any departmental error that does not prejudice the substantial rights of an affected party and in no way affects the outcome of the case will be deemed harmless error and shall not be grounds for overturning the Department decision.~~

**1086.1.0 — Eligible Employees**

~~Any full-time regular salaried employee who occupies a classified/career service job and works a minimum of 1,000 hours per year may file a grievance under this policy, except those listed in Section 1086.2.0, Non-eligible Employees. Employees who present a grievance or complaint in good faith and a reasonable manner within the provisions of this policy shall be free from retaliation or reprisal.~~

**1086.2.0 — Non-eligible Employees**

~~A. — Employees in job classifications and positions assigned to the Professional and Executive Grades Pay Plan (N900's) are not eligible to file a grievance under this policy.~~

~~B. — Employees in job classifications and positions assigned to the Classified/Career Service Pay Plan in grades C125-C130, and seven specified job classifications in grades C120-C123 are not eligible to file a grievance under this policy. See Attachment A for a list of non-eligible career service job classifications.~~

~~C. — The disqualification provided in this section does not prevent the filing of a grievance if the grievance is because of non-selection and the position for which the employee applied is within a classification in which incumbents are eligible to file grievances.~~

~~1086.2.1 — A. — Part-time, temporary, emergency hire, extra help and employees serving in their initial new hire to the Department of Human Services probationary status are not eligible to file a grievance under this policy.~~

~~B. — Probationary status for purposes related to this policy is the status an employee is in during his or her initial new hire to the Department of Human Services, to include any extension of that new hire to the Department status under DHS Policy 1093, Performance Evaluation.~~

~~C. — Any employee who leaves Department of Human Services employment and returns after more than two pay periods, returns as a new hire to the Department, and must complete his or her initial new hire to the Department~~

~~probationary status before he or she can access the grievance process. Employees transferring or promoting within the Department after completing the initial new hire to the Department probationary period retain access to the grievance process.~~

### **1086.3.0 — Americans with Disabilities Act**

~~Any employee regardless of his or her status may utilize this policy to address concerns related to the Americans with Disabilities Act of 1990. However, the State Employee Grievance Review Committee (SGRC) and the State Employee Grievance Appeal Panel (SEGAP) will not hear appeals from employees who are otherwise excluded from coverage.~~

### **1086.4.0 — Filing a Mediation/Grievance**

~~To seek a resolution to a workplace dispute or disciplinary issue the employee must submit the matter in writing to the grievance officer within five working days of the date of the occurrence of the grievable action. The concern must be filed on a DHS-2801, Mediation/Grievance form. The form must be filled in completely and must describe the reasons the employee disagrees with the action taken and what the employee is seeking as a resolution to the dispute. Employees may contact the grievance officer for technical assistance in completing the form.~~

### **1086.5.0 — Policy Components**

~~1086.5.1 — DHS Mediation is an internal non adversarial negotiation between the employee presenting a grievance and his or her supervisor, using a neutral third party mediator. (DHS sponsors this process.)~~

~~1086.5.2 — DFA Mediation is an external non adversarial negotiation between the employee presenting a grievance and his or her supervisor, using a neutral third party mediator. (The Department of Finance and Administration (DFA), Office of Personnel Management (OPM), sponsors this process.)~~

~~1086.5.3 — Grievance Procedure is a more formal process that allows the employee to request that successively higher levels of management review his or her grievance if the employee is not satisfied with the results of the procedure.~~

### **1086.6.0 — DHS MEDIATION**

~~1086.6.1 — In order to reduce the number of formal grievances filed, internal mediation will be utilized as a first step attempt to resolve complaints.~~

~~1086.6.2 — Within five working days after the DHS Employee Relations Office (ERO) receives a grievance, a grievance officer will contact the mediator, the employee and the appropriate level of management to schedule a mediation session to be held within ten working days after the initial receipt of the grievance. The mediation session will be scheduled at a time and location convenient for all parties and will not be recorded.~~

~~1086.6.3—If the process is successful, the mediator will formalize the terms of the agreement in writing, and all parties will sign and date the agreement, which will be filed with the grievance officer within five working days of the conclusion of the mediation session.~~

~~1086.6.4—If the mediation session is unsuccessful, the mediator will prepare a “non settlement form,” that must be signed and dated by all parties, and a copy given to each participant at the conclusion of the mediation session. At this point, the employee may file a DHS 2802 Grievance Response form, to continue the process for any unresolved grievable issue. The completed DHS 2802 must be filed with ERO within five working days following the conclusion of the mediation session.~~

~~1086.6.5—The employee, the supervisor or the mediator may conclude the mediation process at any point if the mediation sessions are not productive.~~

### ~~1086.7.0—Mediation Only Issues~~

~~Matters other than disciplinary action that otherwise are not grievable, disputes involving employees serving an initial new hire to the department probationary status, and supervisory directed mediation may be addressed through the mediation procedure only.~~

### ~~1086.8.0—DFA MEDIATION~~

~~1086.8.1—Employees who have unresolved grievable issues following DHS Mediation may choose to continue their grievance by utilizing either the DFA Mediation or the Grievance Procedure.~~

~~1086.8.2—If the employee chooses DFA mediation, the grievance officer will provide an Agreement to Mediate form that must be signed by the employee and the supervisor/management designee. The grievance officer will submit the grievance statement and the signed Agreement to Mediate form to DFA/OPM. OPM will contact all parties to schedule the mediation.~~

### ~~1086.9.0—GRIEVANCE APPLICATION~~

#### ~~1086.9.1—Grievable Matters:~~

~~A.—An adverse action against any employee or former employee (in case of termination).—Adverse action means termination, suspension without pay, reduction of annual leave, sick leave, compensatory time, or other disciplinary actions or unlawful discrimination.~~

~~B.—Annual or probationary performance evaluations may be the subject of a grievance under this policy only in cases arising from allegations of unlawful discrimination or in cases of disciplinary action, such as probation, suspension, or termination.~~

- ~~C. — A grievance for non-selection for promotion, lateral transfer or a lower grade position (voluntary demotion) is limited to internal DHS review unless the unsuccessful applicant alleges that he or she would have been selected but for discrimination because of race, color, religion, sex, age, disability, nationality, or political beliefs, or violation of the Americans With Disabilities Act or the Family Medical Leave Act.~~

~~1086.9.2 — Non Grievable Matters include, but are not limited to:~~

- ~~A. — Advice given by grievance officers or by the Office of Chief Counsel~~
- ~~B. — Approved DHS/Board policies, procedures, or guidelines~~
- ~~C. — Matters governed by law, regulation or executive orders that are outside the Department's control~~
- ~~D. — Non-disciplinary Counseling Statements, Form DHS 1131, which are used to document a discussion between a supervisor and an employee; the statements can apply to employee job performance, conduct or both.~~
- ~~E. — Reduction in force (RIF) unless an employee alleges that the RIF plan was not followed or results in unlawful discrimination (RIF appeals will be processed through a separate appeals procedure.)~~
- ~~F. — Work reassignments, including days off and shifts when there is not misclassification of job duties and the grade remains the same, or work reassignment to different off days and shifts than agreed upon by the employee at the time of hire.~~
- ~~G. — Complaints against co-workers~~
- ~~H. — Complaints that request a remedy to have a supervisor or other employee disciplined~~
- ~~I. — Compensation~~
- ~~J. — Conditions beyond the control of Department management or mandated by law~~

~~1086.9.3 — Determination of Grievable Matters~~

- ~~A. — After the employee submits a grievance, the grievance officer will decide if the complaint is grievable and notify the grievant in writing if a grievable issue does not exist. The grievant may appeal this decision in writing to the SGRC by seeking an advisory ruling.~~
- ~~B. — The grievance officer will request a determination from the SGRC by filing a brief statement using the Request for Grievable Matter Determination form about the cause of the complaint with the Administrator of the Office of Personnel Management (OPM). The employee may file a written statement through the grievance officer for submission to the Committee at the time of the request for determination of grievability.~~

- ~~C. The grievance officer will send a copy of the request to all parties.~~
- ~~D. The Administrator of OPM will report the Committee's decision to the grievance officer and the employee. The determination should be limited to whether or not the matter is grievable. The Committee will not make any findings at this stage about the merits of the complaint.~~
- ~~E. When a matter is determined to be grievable, either by the grievance officer or by the SGRC, the grievance officer will notify all parties within one day of receipt of the determination.~~

#### ~~1086.10.0 Grievance Procedure~~

~~Within three business days of a determination that a matter is grievable, the grievance officer shall provide a copy of the grievance to the facility/institution manager/superintendent, responsible division area manager/director, or the division director. Within three business days of receiving a grievance, the facility/institution manager/superintendent, responsible division area manager/director, or the division director, or designee, shall identify the agency grievance representative to the grievance officer. The representative shall be the charged party for purposes of the grievance/mediation.~~

#### ~~1086.11.0 Fact-Finding Conference~~

~~1086.11.1 The grievance officer will contact the director of the grievant's division to schedule a fact-finding conference within twenty working days. The division director/designee will conduct the conference. All charged parties and witnesses are required to attend. If the division director personally participated in the actions grieved or otherwise has a conflict of interest, the DHS Director will select an impartial individual with appropriate knowledge of divisional policies and concerns to conduct the fact-finding conference. The deciding official will issue a written decision to ERO on the DHS-2803, Grievance Decision form, within five working days.~~

#### ~~1086.11.2 Conduct of the Fact-Finding Conference:~~

- ~~A. The deciding official will conduct the conference in an informal manner. The deciding official will receive exhibits and take testimony, ruling on the admissibility of both.~~
- ~~B. The rules of evidence or civil or criminal procedure will not apply.~~
- ~~C. The deciding official will determine where to hold the conference and will preside at the conference. The grievance officer will notify all people involved of the date, time and location.~~
- ~~D. All conferences will be tape recorded and available for transcription. The grievance officer must insure that this requirement is met.~~

**1086.12.0 Grievance Representation**

~~The grievant may have a fully participating representative at each formal processing step. The Department and the grievant must inform the grievance officer of a representative a minimum of three working days before the scheduled conference. The name, title and address of the representative must be given. The grievance officer will notify the opposing side. Failure to provide adequate notice may cause the conference to be rescheduled unless the agency agrees to go forward without a representative. Any cost in obtaining representation will be entirely the responsibility of the person hiring the representative.~~

**1086.13.0 Grievance Witnesses**

~~1086.13.1 The grievant and the Department will provide the grievance officer with a list of potential witnesses at each step. The list will include a brief statement of the purpose of each witness. The grievance officer will give notice of time, date, and location of the grievance conference to all DHS employees called as witnesses. The calling party will notify non-DHS employees.~~

~~1086.13.2 The deciding official will determine the relevance of all information to be heard at all internal proceedings. The deciding official will have the discretion to exclude testimony or evidence if such testimony or evidence is not relevant, privileged or eumulative.~~

~~1086.13.3 The deciding official will call all witnesses for questioning. If requested by either party or their representatives, witnesses will be required to wait outside the conference room until needed. Either side or the deciding official in the initial hearing may question witnesses.~~

~~1086.13.4 Grievance officers or DHS attorneys may not be called as witnesses unless they are charged parties or have direct unprivileged knowledge of the acts or omissions that gave rise to the grievance. The DHS Director may compel them to testify to the extent this rule will not be violated.~~

**1086.14.0 Statements**

~~1086.14.1 Either side may make opening statements of no more than ten minutes. Each side should outline the facts to be presented and indicate what the facts may prove.~~

~~1086.14.2 After opening statements, each side will present its case. In all cases involving disciplinary action, the Department will be heard first, followed by the grievant's presentation. However, in cases not involving disciplinary action, or in cases where unlawful discrimination is alleged, the grievant will proceed first, followed by the Department's presentation.~~

~~1086.14.3 Upon completion of both sides' presentations, closing statements will be allowed. They must be limited to five minutes for each side.~~

**1086.15.0 Notification of Decision**

~~A copy of the grievance decision will be sent to the parties and their representatives within 10 working days of the conclusion of the fact finding conference. The copy supplied to the grievant will have the DHS-2802, Grievance Response form, attached. The grievance officer may take any of the following steps to preserve evidence that the grievant was notified of the decision: (1) mailing the decision by certified mail, return receipt requested; (2) obtaining the employee's signature on the DHS-2803 form; or (3) obtaining a receipt from the employee.~~

**1086.16.0 Appeal of Decision**

~~1086.16.1 The grievant may appeal unfavorable decisions by filing the DHS-2802 form within five working days of the receipt of the decision. The grievance officer will notify the DHS Director's office of the appeal and will provide the DHS Director's office a complete copy of the record of the case including a transcript of all testimony below. The DHS Director/designee will then decide the matter based on the record. The DHS Director/designee will issue a written decision within fifteen working days of receipt of the record.~~

~~1086.16.2 If the grievant is not satisfied with the decision of the DHS Director/designee, the grievant may appeal the decision to the SEGAP or the SGRC, as appropriate. The appeal must be filed with the grievance officer within five working days of receipt of the decision. The appeal must be filed using a DHS-2802 form. The grievance officer will notify SGRC or SEGAP of the appeal within one working day. The grievance officer will coordinate the selection of a hearing date with the Panel or Committee.~~

~~1086.16.3 SGRC or SEGAP will conduct further proceedings in accordance with the rules of those bodies. Copies of the Panel and Committee rules are available from the grievance officer.~~

**1086.17.0 SGRC Procedure**

~~If the review body is the SGRC, the DHS Director will review the Committee's recommendations and, within ten days of receipt of the written SGRC recommendation, will submit his decision in writing to all parties, representatives, and supervisors involved. The decision of the Director will be final and binding on all parties regarding the matter and the procedure. The SGRC will receive a copy of the decision.~~

**1086.18.0 SEGAP Procedure**

~~1086.18.1 If the review body is the SEGAP, the DHS Director will review the Panel's decision and implement the decision. If the DHS Director does not agree with the Panel's decision, the Director may, within ten working days of receipt of the Panel's written decision, provide the Chief Fiscal Officer of the State and the aggrieved employee with written justification of the Department's action and request a formal review of the Panel's decision by the Chief Fiscal Officer. The employee may also submit~~

~~comments regarding the DHS Director's justification to the Chief Fiscal Officer. Such response to the Department's appeal will be submitted to the Chief Fiscal Officer within ten calendar days of the date of the Department's appeal. (The grievance officer or authorized representative should process appeals to the Chief Fiscal Officer). The Chief Fiscal Officer will issue a final administrative order within fifteen working days of receipt of the DHS Director's justification and written request for review, affirming, reversing or modifying the SEGAP's decision, and the final administrative order shall be binding on the Department.~~

~~1086.18.2 Employees are not prohibited from availing themselves of remedies outside these procedures. Each employee retains the right to file a complaint with the Equal Employment Opportunity Commission or to pursue other legal remedies.~~

### ~~1086.19.0 Intervention~~

~~The DHS Director or division director may intervene during the pendency of a grievance within DHS or within twenty days of the conclusion of the mediation process. Intervention may include conducting special investigations, suspending time frame requirements, and making a decision. The DHS Director will make every effort to resolve all matters involving allegations of unlawful discrimination, termination, suspension without pay, involuntary demotion or failure to award compensation.~~

### ~~1086.20.0 Confidentiality~~

~~All persons involved in the grievance process shall be subject to the confidentiality requirements for both programmatic documents as well as personnel files. Information concerning a grievance shall be open for inspection when such is provided in the Arkansas Freedom of Information Act. Violations of confidentiality requirements are subject to discipline under DHS Policy 1084 — DHS Employee Discipline Policy: Conduct/Performance and DHS Policy 1053 — Freedom of Information Act/Charges for Copying Documents. This policy as it relates to the confidentiality of records does not bind SGRC or SEGAP.~~

### ~~1086.21.0 Records~~

~~1086.21.1 The grievant, the charged party, and the SGRC or SEGAP may view or have a copy of the grievance file. One copy of a written transcript will be made available to authorized persons. Tape duplication will be made available without cost to blind or visually impaired persons.~~

~~1086.21.2 The division director/designee will make all final determinations on the release or the viewing of documents related to pending grievances on a case by case determination and based upon the Arkansas Freedom of Information Act.~~

~~1086.21.3 The grievance officer will retain all records related to grievances.~~

~~1086.21.4 Records will be kept as required by DHS 1083, Document & Record Disposition Policy.~~

~~1086.21.5 Documents sent to the grievance office after a case file has been submitted to the Panel or Committee will be returned to the sender. The sender may attempt to have the additional documents entered into the record at the Committee or Panel conference or hearing. The Committee or Panel Chair will decide the relevancy of the material and may accept the additional information after the opposing side has the opportunity to review the material and make any objections. The sender should bring seven copies of any documentation to be introduced to the SGRC hearing or five copies to the SEGAP hearing.~~

### ~~1086.22.0 Employee's Role~~

~~1086.22.1 Employees will:~~

- ~~A. Be given time during work hours to meet with a grievance officer or mediator when the grievance officer or mediator schedules the meeting. Excused time off should be given to start the process or to participate in scheduled meetings or conferences. Any other time off relating to the grievance will be subject to approved annual leave.~~
- ~~B. Be paid for travel expenses, including parking fees, when they attend scheduled fact finding conferences or meetings with decision makers.~~
- ~~C. Have access to relevant records and documents, subject to the confidentiality requirements as set out by state or federal law.~~
- ~~D. Not use DHS resources for filing grievances, to respond to a grievance decision or to prepare requests for or respond to a request for documents, unless the forms or documents are those required by this policy. The use of other DHS resources for these purposes is a violation of DHS Policy 1084 — DHS Employee Discipline Policy: Conduct/Performance.~~

~~1086.22.2 Employees may:~~

- ~~A. Seek technical assistance from the grievance officer by phone.~~
- ~~B. Have witnesses present and question them at scheduled conferences.~~
- ~~C. Choose a representative.~~
- ~~D. Request interpreters, readers or other types of assistance that are reasonable and necessary.~~
- ~~E. File the DHS 2801, Mediation/Grievance Statement, via FAX to 501-682-8926; however, if the employee uses a FAX machine, he or she must call 501-682-6003 to assure that the form has been received within the time frame as stated in the instructions on the form.~~

**~~1086.23.0 Management's Role~~**

~~1086.23.1 The DHS Director/designee may:~~

- ~~A. Gather all of the facts and attempt to resolve grievances in good faith.~~
- ~~B. Assure that employees and former employees can use this procedure without interference, restraint, coercion or reprisal.~~
- ~~C. Communicate this policy and procedure to each employee.~~

~~1086.23.2 The DHS Director reserves the right to delegate any or all of these rights to designated officials subject to the provisions of policy and consistent with applicable state and federal laws or regulations.~~

**~~1086.24.0 Grievance Officer's Role~~**

~~The duties and responsibilities of grievance officers include:~~

- ~~A. Providing technical assistance~~
- ~~B. Maintaining complete records of all grievances, complaints, and appeals~~
- ~~C. Determining grievability~~

**~~1086.25.0 Combining Grievances~~**

~~When two or more persons file more than one grievance about the same issue or if a single person files more than one grievance, the deciding official or grievance officer may combine the grievances into one grievance.~~

**~~1086.26.0 Time Frames~~**

~~1086.26.1 The employee must file the grievance within five working days from the date the employee learned of the grievable action.~~

~~1086.26.2 The employee (grievant) presenting the grievance may conclude the Grievance Procedure at any time in the process.~~

**~~1086.27.0 Corrective Action~~**

~~1086.27.1 When a matter is decided in favor of the grievant, the deciding official or grievance officer must ensure corrective action is taken in a timely manner. If documentation is to be removed or replaced, all DHS files must reflect this action.~~

~~1086.27.2 The person responsible for taking action to resolve a grievance that is overturned will prepare a confidential memorandum to the Office of Finance and Administration (OFA), Personnel Section, requesting that the documentation be removed and, if appropriate, be replaced with specified actions. The division director must approve the memorandum before it is sent to OFA. The memorandum must include specific instructions to all offices that maintain copies of such documentation to remove the~~

~~documentation and send the original copies to the grievance office, which will retain the documents~~

~~1086.27.3 Failure to ensure that all elements of the decision are implemented or initiated within 10 working days of receiving the decision may result in disciplinary action~~

~~**1086.28.0 Originating Section/Department Contact**~~

~~Office of Finance and Administration  
Human Resources/Support Services Section  
Policy and Administrative Program Management  
P.O. Box 1437/Slot Number WG3  
Little Rock, AR 72203-1437  
Telephone: 682-5835~~

~~Replacement Notation: This policy replaces DHS 1086 dated December 30, 2009, July 21, 2008, May 14, 2008, November 14, 2003, November 30, 2002 and Management Directive 1, Grievance Prevention and Resolution, dated March 1, 2002.~~

Attachment A  
DHS Policy 1086 – Grievance & Mediation  
Job Classifications Exclusions List (Not Eligible)

OPM Job Code	OPM Job Classification	OPM Grade
<b>A007C</b>	AUDIT MANAGER	C129
<b>G004C</b>	MANAGING ATTORNEY	C129
<b>G101C</b>	DHS AREA MANAGER	C129
<b>L001C</b>	PSYCHOLOGIST SUPERVISOR	C129
<b>A010C</b>	AGENCY CONTROLLER II	C128
<b>D007C</b>	INFORMATION SYSTEMS MANAGER	C128
<b>A016C</b>	DHS DMS BUSINESS OPERATIONS MANAGER	C127
<b>G021C</b>	DHS/DSB ASSISTANT DIRECTOR	C127
<b>G022C</b>	DHS DIRECTOR OF EMERGENCY OPERATIONS	C127
<b>G024C</b>	DEPARTMENT ADMINISTRATIVE LAW JUDGE	C127
<b>G025C</b>	ATTORNEY SUPERVISOR	C127
<b>L003C</b>	PSYCHOLOGIST	C127
<b>M002C</b>	DHS BEHAV HLTH ASSOC DIR, AHC	C127
<b>M003C</b>	DHS BEHAV HLTH CHILDRENS SYSTEM CARE DIR	C127
<b>X007C</b>	DHS/DYS ADMIN PROG COMPLIANCE	C127
<b>G042C</b>	DHS ADMINISTRATIVE LAW JUDGE	C126
<b>G047C</b>	ATTORNEY SPECIALIST	C126
<b>L006C</b>	ASSOCIATE DIRECTOR OF NURSING	C126
<b>A024C</b>	DHS DIVISION CHIEF FISCAL OFFICER	C125
<b>A027C</b>	ACCOUNTING OPERATIONS MANAGER	C125
<b>E010C</b>	DHS/DYS EDUCATION MANAGER	C125
<b>G056C</b>	DHS/DCC ASST DIR OPS & PROG SUPV	C125
<b>L009C</b>	NURSE MANAGER	C125
<b>L010C</b>	DHS DMS MEDICAL ASSISTANCE MANAGER	C125
<b>L011C</b>	DHS ALCOHOL/DRUG ABUSE PREV ASST DEP DIR	C125
<b>M005C</b>	DHS ASSISTANT SUPERINTENDENT – CONWAY	C125
<b>R008C</b>	DHS EMPLOYEE RELATIONS MANAGER	C125
<b>L021C</b>	NURSING HOME ASSISTANT ADMINISTRATOR	C123
<b>L024C</b>	DHS BEHAV HLTH FACILITY ADMIN	C123
<b>R013C</b>	AGENCY HUMAN RESOURCES MANAGER	C123
<b>G100C</b>	DHS COUNTY ADMINISTRATOR III	C122
<b>G111C</b>	DHS COUNTY ADMINISTRATOR II	C121
<b>M011C</b>	FAM SVC WORKER COUNTY SUPERVISOR (DCFS)	C121
<b>G130C</b>	DHS COUNTY ADMINISTRATOR I	C120

**1089.0 — EMPLOYEE PERSONNEL FILES**

The purpose of this policy is to establish rules of the Department of Human Services (DHS) regarding employee personnel files and access to those files. This policy is applicable to all DHS employees.

**1089.1.0 — Substantive Rules**

A file will be maintained on each DHS employee in the Personnel Section of the Office of Finance and Administration that contains information pertaining to the employee.

**1089.2.0 — Procedural Rules****1089.2.1 — Items Contained in Personnel Files:**

A. The following items are contained in each employee's personnel file, when applicable, and are removed from the files only upon written direction from the employee's Division Director/designee or as the result of a grievance:

- Disclosure Forms
- Proof of Prior Service form
- DHS 1161 — Request for Personnel Action
- Request to Change Address
- Request for Change of Name
- Disciplinary Action Documents (including Non Disciplinary Counseling Statements)
- Immigration and Naturalization Service, Employment Eligibility Verification (I-9)
- Employment application and resume
- Personnel Performance Evaluations (PPE)
- Letters of commendation or recognition
- Selective Service forms
- Training Certificates
- Reference check forms
- Arkansas Public Employees Retirement System (APERS) forms
- New Employee Check List

B. The files are accessible for review by the employee and the employee's supervisor upon request and presentation of a photo ID. Those unable to personally perform the review may indicate a designee via written request that the designee must present along with a photo ID before accessing the file.

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- ~~C. Hiring officials may review the files of job applicants on a hire list by presenting a photo ID and a signed Release Authorization Form, and completing a Request for Reviewing Personnel File form.~~
- ~~D. Employees may receive a copy of their own personnel file upon request with presentation of a photo ID. Personnel contacts and supervisors may receive copies of files after consulting with the Manager of Personnel Processing or the File Room Supervisor.~~

### 1089.2.2 FOI Requests:

- ~~A. Personnel files are considered public records and therefore subject to the Freedom of Information Act (FOI) (see Policy 1053 Freedom of Information Act) which states that all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.~~
- ~~B. FOI requests are referred to the Office of Chief Counsel (OCC) for review and to provide guidance to personnel staff and OFA/HR sends written notice to the employee whose file will be reviewed.~~
- ~~C. Personnel records are non-exempt from FOI except where disclosure would constitute an unwarranted invasion of personal privacy.~~
- ~~D. Before viewing per an FOI request, personnel files will be sanitized to obscure items which may not be disclosed per the FOI Act. To assure the employee's privacy is maintained, confidential information will be blocked out to prevent public viewing. Personnel staff is also present at all times during the review to guard against removal of any records from the file.~~

### 1089.2.3 Terminations:

~~Upon an employee's termination the employee's personnel file will be scanned and maintained in an electronic database.~~

### 1089.3.0 Originating Section/Division Contact

~~Office of Finance and Administration  
Personnel Records  
P.O. Box 1437 Slot WG1  
Little Rock, Arkansas 72203-1437  
Telephone: (501) 682-6118~~