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## MEMORANDUM

**To:** Municipal Officials

**From:** Dominic Cloud, Director, and  
Jim Barlow, Senior Staff Attorney  
VLCT Municipal Assistance Center

**Date:** June 22, 2007

**RE:** Model Personnel Policy

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The VLCT Municipal Assistance Center has developed the attached model personnel policy to assist cities and towns that are updating or creating personnel policies.

We have tried to develop policies that reflect the best practices in municipal personnel administration. Nonetheless, each municipality will have to work closely with its department heads and managers to determine which policies are the best fit for its organization.

As always, please call us if you have questions or would like to arrange for some onsite training on these matters.

*Sponsor of:*

VLCT Health Trust, Inc.

VLCT Municipal Assistance  
Center

VLCT Property and Casualty  
Intermunicipal Fund, Inc.

VLCT Unemployment  
Insurance Trust, Inc.

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# **Personnel Policies**

## **Town of \_\_\_\_\_, Vermont**

### **Section 1: Title and Authority**

This policy shall be known as the Town of \_\_\_\_\_ personnel policy. It has been adopted by the Town of \_\_\_\_\_ selectboard pursuant to 24 V.S.A. §§ 1121 and 1122.

This personnel policy does not constitute a contract of employment. Employment with the Town of \_\_\_\_\_ is *at will* and not for any definite period or succession of periods of time. The Town or the employee may terminate employment at any time, with or without notice.<sup>1</sup> The selectboard reserves the right to amend any of the provisions of this personnel policy for any reason and at any time, with or without notice.

This personnel policy will be administered by the *[Town Manager/Selectboard]* or *[his or her/its]* authorized representative.

### **Section 2: Persons Covered**

This personnel policy applies to full-time and part-time employees of the Town of \_\_\_\_\_. Except as stated herein, elected officers and their statutory assistants, members of Town boards and commissions, volunteers, seasonal employees and persons who provide the Town with services on a contract basis are not covered by this policy.<sup>2</sup>

For purposes of this policy, a full-time employee is an employee who works at least \_\_\_\_\_ hours per week on a regular and continuing basis. A part-time employee is an employee who works fewer than \_\_\_\_\_ hours per week on a regular and continuing basis.

Where a conflict exists between this policy and any collective bargaining agreement or individual employment contract, the latter will control.

### **Section 3: Equal Employment Opportunity**

The policy of the Town of \_\_\_\_\_ is to provide equal opportunity to all employees and applicants without regard to race, color, religion, sex, sexual orientation, age, nationality origin, marital status, disability, veteran's status or any other category under local, state or federal law.

### **Section 4: Probationary Period**

All new employees will be required to complete a six-month probationary period. The purpose of this probationary period is to determine whether the employee is suited for the job. During the probationary period, an employee may be terminated at any time at the sole discretion of the Town. Notwithstanding any other provision of this policy, an employee terminated during the probationary period will have no right to appeal such termination.

## **Section 5: Conduct of Employees**

All employees are considered representatives of the Town and as such are expected to conduct themselves in a courteous, helpful and respectful manner in all their interactions with the public and other employees.

All employees are expected to faithfully execute the duties and responsibilities of their office to the best of their ability and in compliance with the provisions of this personnel policy.

## **Section 6: Hours of Service**

Regular work hours for persons employed at the Town hall or other town offices shall be \_\_ a.m. to \_\_ p.m., Monday through Friday, with \_\_\_\_\_ allowed for lunch.

Regular work hours for the road crew shall be \_\_ a.m. to \_\_ p.m., Monday through Friday, with \_\_\_\_\_ allowed for lunch, unless the road foreman and the *[Town Manager/Selectboard]* agree otherwise.

Regular work hours may be changed and employees may be expected to work additional hours that may exceed forty hours in a given week, as circumstances require.

All employees are expected to be in attendance during regular work hours. Employees who will be absent from work are expected to notify their supervisor in advance whenever possible. Employees who are calling in sick are expected to notify their Supervisor as soon as possible, but no later than \_\_ a.m.

## **Section 7: Gratuities and Gifts**

Employees may not directly or indirectly ask, demand, exact, solicit, accept or receive a gift, gratuity, act or promise beneficial to that individual, or another, which could influence any action or inaction associated with their official duties on behalf of the Town, or create the appearance of impropriety in connection with any actions or inactions associated with their official duties on behalf of the town.

## **Section 8: Outside Employment**

The primary occupation of all full-time employees shall be to the Town. Employees may not engage in any outside business activities during their normal working hours. Employees are prohibited from undertaking outside employment that interferes with their job performance or constitutes a conflict of interest.

Prior to accepting any outside employment, employees will disclose their intent to \_\_\_\_\_ in writing and obtain prior clearance from the Town that such employment does not constitute a conflict of interest.

A conflict of interest means a direct or indirect personal or financial interest of an employee, his or her close relative, household member, business associate, employer or employee. A close relative includes a spouse, civil union partner, romantic co-habitant, parent, stepparent, grandparent, child, stepchild, grandchild, sibling, aunt or uncle, niece or nephew, parent-in-law and sibling-in-law.

### **Section 9: Political Activity**

No employee may use his or her official authority for the purpose of interfering with or affecting the nomination or election of any candidate for public official, or demand or solicit from any individual direct or indirect participation in any political party, political organization or support of any political candidate. Employees are prohibited from using Town facilities, equipment or resources for political purposes and from pursuing political activities while working.

This personnel policy is not to be construed to prevent employees from becoming or continuing to be members of any political party or organization, from attending political party or organization meetings or events, or from expressing their views on political matters, so long as these views are clearly articulated as being those of the individual and not of the Town, and these activities do not interfere with the individual's ability to effectively perform his or her duties and take place or are expressed during non-working hours. Nor is this personnel policy to be construed from prohibiting, restraining or in any manner limiting an individual's right to vote with complete freedom in any election.

### **Section 10: Nepotism**

The Town – in recognition of the potential for a conflict of interest to occur in the workplace where a close relative is responsible for supervising or evaluating the work performance of another close relative – prohibits the hiring or transferring of relatives, when doing so will result in a close relative supervising or evaluating another close relative, or a close relative supervising or evaluating the immediate supervision of another close relative.

A close relative includes a spouse, civil union partner, romantic co-habitant, parent, stepparent, grandparent, child, stepchild, grandchild, sibling, aunt or uncle, niece or nephew, parent-in-law and sibling-in-law.

### **Section 11: Alcohol and Drug Use**

Reporting to work or working under the influence of alcohol or drugs is strictly prohibited, unless the drug is prescribed and used in the manner prescribed by a duly licensed physician or dentist.

### **Section 12: Tobacco Use**

In recognition of the hazards that tobacco poses to the health of employees, and in accordance with 18 V.S.A. §§ 1421 et seq. and §§ 1741 et seq., the Town hereby prohibits employees' use of

tobacco in any form in all publicly owned buildings, offices and enclosed areas, and in all Town vehicles.<sup>3</sup>

### **Section 13: Performance Evaluations**

Employees may be subject to job performance evaluations at such times and in such manner as the *[Town Manager/Selectboard]* or *[his/her or its]* authorized representative deems reasonable. The results of such evaluations will be submitted to the employee, the employee's supervisor, the *[Town Manager/Selectboard]* and will become a part of the employee's personnel file.

### **Section 14: Personnel Records**

Personnel records will be maintained for each employee of the Town. In accordance with Vermont's Public Records Law, any employee or the employee's designated representative may inspect or copy his or her personnel file at a mutually agreeable time during regular office hours. The Town reserves the right to have its representative present at the time its files are examined or copied.

### **Section 15: Use of Town Equipment**

Except as provided in Section 23, the use of Town equipment or property for personal use is strictly prohibited.

### **Section 16: Use of Town Computer System<sup>4</sup>**

The Town computer system is to be used by employees for the purpose of conducting Town business. Occasional, brief, and appropriate personal use of the Town computer system is permitted, provided it is consistent with this policy and does not interfere with an employee's job duties and responsibilities.

Employees should have no expectation of privacy regarding anything created, sent or received on the Town computer system. The Town may monitor any and all computer transactions, communications and transmissions to ensure compliance with this policy and to evaluate the use of its computer system. All files, documents, data and other electronic messages created, received or stored on the Town computer system are open to review and regulation by the Town and may be subject to the provisions of Vermont's Public Records Law.

Employees may not introduce software from any outside source on the Town's computer system without explicit prior authorization from their supervisor. Employees may be held responsible for any damages caused by using unauthorized software or viruses they introduce into the Town computer system.

Employees who have a confidential password to access the Town's operating system should be aware that this does not mean the computer system is for personal confidential communication, nor does it suggest that the computer system is the property of that person.

Transmission of electronic messages on the Town computer system shall be treated with the same degree of propriety, professionalism, and confidentiality as written correspondence. The following are examples of uses of the Town computer system which are prohibited:

- Communications that in any way may be construed by others as disruptive, offensive, abusive, discriminatory, harassing, or threatening;
- Communications of sexually explicit images or messages;
- Transmission of chain letters or solicitations for personal gain, commercial or investment ventures, religious or political causes, outside organizations, or other non job-related solicitations during or after work hours;
- Access to Internet resources, including web sites and news groups, that are inappropriate in a business setting;
- Any other use that may compromise the integrity of the Town and its business in any way.

Email messages that are intended to be temporary, non-substantive communications may be routinely discarded. However employees must recognize that emails sent, received, or stored on the Town computer system are subject to Vermont's Public Records Law and may be covered by the State of Vermont's retention schedule for municipal records.<sup>5</sup>

For purposes of this section, computer system means all computer-related components and equipment including, but not limited to, host computers, file servers, workstation terminals, laptops, software, internal or external communication networks, the world wide web (www), the Internet, commercial online services, bulletin board systems, back up systems and the internal and external e-mail systems accessed via the Town's computer equipment.

### **Section 17: Eligibility for Benefits<sup>6</sup>**

The town offers the following group [*life, health, dental and short term/long term disability*] insurance programs for the benefit of its eligible full and part time employees.

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Part-time employees who are regularly scheduled to work at least \_\_\_ hours a week are eligible to receive the above benefits on a prorated basis, subject to the eligibility requirements of the insurance carrier.

The town reserves the right to change insurance carriers, or to add, delete or amend insurance benefit programs in its sole discretion. The town also reserves the right to change the amount or percentage of its contribution to the cost of any group health insurance program. Employees will be provided with advance notice of any change in the contribution rate.

## Section 18: Holiday Leave<sup>7</sup>

Full- and part-time employees will receive the following paid holiday leave:

- New Year's Day (January 1)
- Martin Luther King Jr.'s Birthday (3<sup>rd</sup> Monday in January)
- Presidents Day (3<sup>rd</sup> Monday in February)
- Town Meeting Day (1<sup>st</sup> Tuesday in March)
- Memorial Day (last Monday in May)
- Independence Day (July 4)
- Bennington Battle Day (August 16)
- Labor Day (1<sup>st</sup> Monday in September)
- Columbus Day (second Monday in October)
- Veterans' Day (November 11)
- Thanksgiving Day (4<sup>th</sup> Thursday in November)
- Christmas Day (December 25)

Employees will receive holiday leave pay at the employee's regular rate of pay. Part-time employees will receive prorated holiday leave pay based on the number of hours the employee is regularly scheduled to work.

Holidays falling on a Saturday will be observed the preceding Friday. Holidays falling on a Sunday will be observed the following Monday.

A non-exempt employee who is required to work on a holiday will be compensated at the rate of one and one-half times the employee's regular rate of pay.

If a non-exempt employee is not required to work on a holiday, hours paid for the holiday [*will/will not*] be counted as hours worked when determining overtime compensation.

Holidays that fall during an employee's vacation leave will not be charged as vacation leave.

## Section 19: Vacation Leave

Full- and part-time employees will accrue vacation at the following annual rates:

| Years of<br><u>Service</u>                          | Annual<br><u>Accrual</u><br><u>Rate</u> |
|---|---|
| 1 <sup>st</sup> year                                | __ days                                 |
| 2 <sup>nd</sup> through 9 <sup>th</sup> year        | __ days                                 |
| 10 <sup>th</sup> year through 14 <sup>th</sup> year | __ days                                 |
| 15 <sup>th</sup> through 19 <sup>th</sup> year      | __ days                                 |
| 20 <sup>th</sup> and subsequent years               | __ days                                 |

Full-time employees will receive vacation leave pay at the employee's regular rate of pay. Part-time employees will receive prorated vacation leave pay based on the number of hours the employee is regularly scheduled to work in a week.

Employees are strongly encouraged to take an annual vacation. If an employee does not use all of the employee's vacation leave in a year, the employee may carry unused vacation leave forward to the next year up to a maximum of \_\_\_ vacation days. If an employee has unused vacation leave exceeding this maximum amount, the employee will be compensated for this excess unused leave at a rate equal to the employee's regular rate of pay on the last day of the year of employment in which vacation leave was received.

An employee who resigns from employment with the Town will be compensated for unused vacation leave, provided that the employee gives at least two weeks written notice of the resignation.

## **Section 20: Sick Leave**

Employees will receive \_\_\_ paid sick leave days per year. An employee may use sick leave for an illness or injury that prevents the employee from performing the employee's job duties. An employee may also use sick leave to attend the following appointments that cannot be held outside normal working hours:

- A medical appointment
- An appointment eligible for short-term family leave under the provisions of the Vermont Parental and Family Leave Act (21 V.S.A. § 472a).
- A funeral not eligible under Section 10.
- A meeting with the employee's personal attorney.
- An appointment for the closing, purchase, sale, or refinancing of a primary residence.
- Any other appointments authorized in advance by the employee's supervisor.

Full-time employees will receive sick leave pay at the employee's regular rate of pay. Part-time employees will receive prorated sick leave pay based on the number of hours the employee is regularly scheduled to work in a week.

If an employee does not use all of the employee's sick leave in a year, the employee may carry a maximum of \_\_\_ sick leave days forward to the next year. If an employee has unused sick leave exceeding \_\_\_ days, the employee will not be compensated for that excess unused leave.

Upon separation from employment, an employee will not be compensated for unused sick leave.

## **Section 21: Bereavement Leave**

Employees will receive \_\_\_ paid bereavement leave days per year. Employees may use bereavement leave for the death of a close relative or any other relative if the relative was living in the same household as the employee immediately preceding his or her death.

Pay for bereavement leave will be at the employee's regular rate of pay. Part-time employees will receive prorated bereavement leave pay based on the number of hours the employee is regularly scheduled to work in a week.

If an employee does not use all of the employee's bereavement leave in a year, the employee may not carry the unused leave forward to the next year. Upon separation from employment, an employee will not be compensated for unused bereavement leave.

## **Section 22: Parental and Family Leave**

Eligible employees may receive leave as described in the Family and Medical Leave Act (FMLA) and the Vermont Parental and Family Leave Act (PFLA). These federal and state laws will determine employee eligibility, the qualifying reasons for such leave and the length of leave.

The Town reserves the right to designate any qualifying leave of absence granted under this policy as leave under FMLA or the PFLA. Where an employee's leave request is covered by the PFLA and the FMLA, the Town will adhere to the law that provides the most benefits to the employee. If an employee is entitled to leave under both the PFLA and FMLA, the leave periods will run concurrently.

For the purposes of determining the twelve month period in which an employee may be entitled to PFLA and/or FMLA leave, the Town will use a rolling twelve-month period measured backward from the date an employee uses such leave.

## **Section 23: Short Term Family Leave<sup>8</sup>**

In accordance with the Vermont Short Term Family Leave Law, eligible employees may be entitled to take unpaid leave not to exceed four hours in any thirty-day period and not to exceed twenty-four hours in any twelve month period for the following purposes:

- To participate in preschool or school activities directly related to the academic educational advancement of the employee's child, step-child, foster child, or ward;
- To attend or accompany the employee's child or other family member to routine medical or dental appointments;
- To accompany the employee's parent, spouse or parent-in-law to other appointments for professional services related to their care and well-being; or
- To respond to a medical emergency of the employee's family member.

The Town may require that leave be taken in a minimum of two-hour segments. At the option of the employee, accrued paid leave may be used. An employee shall make a reasonable attempt to schedule appointments for which leave may be taken outside of regular work hours. An employee shall provide the Town with the earliest possible notice of the intent to take short term family leave, but in no case later than seven days before leave is to be taken, except in the case of an emergency.

## **Section 24: Leave of Absence Without Pay**

All requests for leaves of absence without pay for any reason other than those covered by federal or state law must be submitted in writing to the employee's supervisor and must set forth the purpose for which the leave is requested. All leave requests must be for a definite period of time and include a specified date of return.

If a leave of absence without pay is granted, the employee may, at the Town's sole discretion, continue the employee's group health plan coverage by paying the required premium in accordance the payment schedule established by the Town. Other employee benefits (e.g. sick leave, vacation, seniority, etc.) will not accrue during the unpaid leave period.

## **Section 25: Military Leave**

The Town will comply with the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4303 et seq., and 21 V.S.A. §§ 491 et seq. Employees who take military leave subject to the provisions of these laws will be granted leave without pay. At the option of the employee, any paid leave accrued prior to the commencement of the leave may be used.

## **Section 26: Jury Leave**

The Town [*will/will not*] compensate employees for their service as jurors or witnesses. In accordance with 24 V.S.A. § 499, employees will otherwise be considered in the service of the Town for purposes of determining seniority, benefits, credit towards vacations, sick leave, and other rights, privileges, and benefits of employment.

When Town employees are called to serve as a witness in a court proceeding due to their status as an employee of the Town, the Town will compensate the employee for the difference between their regular rate of pay and their compensation as a witness. The Town will pay the difference only when the employees' regular rate of pay exceeds their compensation as a witness.

## **Section 27: Overtime and Compensatory Time Off**

In accordance with the Fair Labor Standards Act, the Town compensates all nonexempt employees at the rate of one and one-half hours for each hour actually worked in excess of forty hours in any workweek. Employees employed in executive, administrative or professional capacities as defined by the FLSA are exempt from this requirement.<sup>9 10</sup>

In lieu of overtime pay, nonexempt employees may accrue compensatory time off ("comp time") subject to the following conditions:

- Comp time is earned at a rate of one and one half hours for each hour worked in excess of forty hours in any workweek.

- An employee may accrue a maximum of forty hours of comp time (40 hours of comp time represents 26.67 hours of actual overtime work). An employee who has accrued 40 hours of comp time will be paid overtime compensation for additional overtime hours of work.
- An employee may, at the Town's discretion, be paid in cash in lieu of compensatory time off.
- An employee receiving payment for accrued comp time will be paid at the regular rate of pay earned by the employee at the time the employee receives such payment.
- Upon termination from employment, an employee will be paid for unused comp time at a rate not less than the average regular rate of pay received by the employee during the last three years of employment or the employee's final regular rate of pay, which ever is higher.

An employee who has accrued comp time and requested use of comp time will be permitted to use such time off within a reasonable period after making the request, if such use does not unduly disrupt the Town's operations. Requests for use of comp time must be submitted to the employee's supervisor, who will have sole discretion to grant or deny the request. Requests for use of comp time will not unreasonably be withheld.

### **Section 28: Employment Discrimination**

Vermont and federal law prohibit employment discrimination or retaliation based on race, color, religion, sex, or national origin, sex or age, or against a qualified individual with a disability with respect to all employment practices. Vermont law also prohibits discrimination based on sexual orientation, ancestry, HIV status, and place of birth. It is also unlawful to retaliate against employees or applicants who have alleged employment discrimination.

Employees are encouraged to bring any complaints alleging unlawful discrimination to the attention of the employee's *[Supervisor/Town Manager]* or *[his/her]* designee who will arrange a meeting to discuss the matter. The meeting will take place as soon as reasonably possible, but in no case later than seven calendar days from receipt of notification. If the *[Supervisor/Town Manager]* or *[his/her]* designee is unable to resolve the matter during this meeting, the aggrieved party may submit to the *[Supervisor/Town Manager]* or *[his/her]* designee a written, signed complaint within seven additional calendar days. The *[Supervisor/Town Manager]* or *[his/her]* designee will then have an additional fifteen calendar in which to conduct an investigation and to issue a report with recommendations to the selectboard. The selectboard will, within ten calendar days, notify the aggrieved part of its decision.

### **Section 29: Sexual Harassment**

Sexual harassment in the workplace is illegal under federal and Vermont law and is strictly prohibited. The Town is committed to providing a workplace free from this unlawful conduct. All employees have the right to work without being subjected to insulting, degrading or exploitative treatment on the basis of their gender. It is against the policies of the Town for any individual, male or female, to sexually harass another individual in the workplace. In accordance with 21 V.S.A. § 495h, the Town has adopted the following sexual harassment policy. All employees are required to read this policy before signing the employee acknowledgement form.

Sexual harassment is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- submission to that conduct is made either explicitly or implicitly a term or condition of employment;
- submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
- the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Examples of sexual harassment include, but are not limited to, the following when such instances or behavior come within one of the above definitions:

- either explicitly or implicitly conditioning any term of employment (e.g., continued employment, wages, evaluation, advancement, assigned duties or shifts) on the provision of sexual favors;
- touching or grabbing a sexual part of an individual's body;
- touching or grabbing any part of an individual's body after that party has indicated, or it is known, that such physical contact was unwelcome;
- continuing to ask an individual to socialize on or off-duty when that person has indicated he/she is not interested;
- displaying or transmitting sexually suggestive pictures, objects, cartoons or posters if it is known or should be known that the behavior is unwelcome;
- continuing to write sexually suggestive notes or letters if it is known or should be known that the person does not welcome such behavior;
- referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior;
- regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior;
- retaliation of any kind for having filed or supported a complaint of sexual harassment (e.g., ostracizing the person, pressuring the person to drop or not support the complaint, adversely altering that person's duties or work environment, etc.);
- derogatory or provoking remarks about or relating to an employee's sex;
- harassing acts or behavior directed against a person on the basis of his or her sex;
- off-duty conduct which falls within the above definition and affects the work environment.

It is also unlawful to retaliate against employees for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment.

Any individual who believes that she or he has been the target of sexual harassment, or who believes she or he has been subjected to retaliation for having brought or supported a complaint of harassment, is encouraged to directly inform the offending person or persons that such conduct is offensive and must stop.

Any employee who wishes to report sexual harassment should:

*List the name(s) and contact information for those person(s) with whom internal complaints may be filed.*

Once the Town receives a complaint of sexual harassment, it will take all necessary steps to ensure that the matter is promptly investigated and addressed. If sexual harassment is found to have occurred, the Town will take appropriate action, ranging from a verbal warning up to and including dismissal.

Complaints of sexual harassment or retaliation may also be filed with the following agencies:

Vermont Attorney General's Office  
Civil Rights Unit  
109 State Street  
Montpelier, VT 05609-1001  
Tel: (802) 828-3171 (voice/TODD)

Equal Employment Opportunity Commission  
1 Congress Street  
Boston, MA 02114  
Tel: (617) 565-3200 (voice), (617) 565-3204 (TODD).

These agencies may conduct impartial investigations, facilitate conciliation, and, if they find that there is probable cause or reasonable grounds to believe sexual harassment occurred, they may take a case to court.

### **Section 30: Employee Discipline**

The Town of \_\_\_\_\_ has adopted a progressive discipline process to identify and address employee and employment related problems. The Town's progressive discipline process applies to any and all employee conduct that the Town in its sole discretion, determines must be addressed by discipline.

The progressive discipline process does not apply to elected officers and their statutory assistants. However, an elected officer may choose to follow the requirements of this policy for discipline and termination of his or her statutory assistants. A statutory assistant means an individual appointed to his or her position by an elected officer of the Town having express statutory authority to appoint an assistant. Statutory assistants include the assistant clerk and the assistant treasurer.

Under the town's progressive discipline process, an employee may be subject to disciplinary action, up to and including termination, for violation of the provisions of this personnel policy and/or failure to maintain an acceptable level of performance. The Town may take prior disciplinary action into consideration when disciplining or terminating an employee. Violations

of different rules may be treated as repeated violations of the same rule for purposes of progressive discipline.

Most often, employee conduct that warrants discipline results from unacceptable behavior, poor performance, or violation of the Town's policies, practices, or procedures. However, discipline may be issued for conduct that falls outside of those identified areas. The Town also reserves the right to impose discipline for off-duty conduct that adversely impacts the legitimate interests of the Town. The Town reserves the right in its sole discretion to bypass progressive discipline and to take whatever action it deems necessary to address the issue at hand. This means that more or less severe discipline, up to and including termination, may be imposed in a given situation at the Town's sole discretion.

The Town also retains the right to unilaterally eliminate positions or reduce the work hours of a position or positions due to economic conditions, shortage of work, organizational efficiency, changes in departmental functions, reorganization or reclassification of positions resulting in the elimination of a position or for other related reasons.

Probationary employees are not subject to the Town's progressive discipline process. Notwithstanding any other provision of this policy, an employee terminated during the probationary period will have no right to appeal such termination.

The Town will normally adhere to the following progressive disciplinary process, but reserves the right to bypass any or all steps of progressive discipline when it determines, in its sole discretion, that deviation from the process is warranted: (1) verbal warning; (2) written warning; (3) suspension; and (4) termination.

Employees are prohibited from engaging in conduct listed below and may receive discipline, up to and including termination, for doing so. This list has been established to provide examples of behavior that could warrant a range of disciplinary sanctions. Appropriate levels of discipline may be based on the severity of employee conduct. This list is not exhaustive.

- Refusing to do assigned work or failing to carry out the reasonable assignments of a *[Supervisor/Town Manager/ Selectboard]*.
- Being inattentive to duty, including sleeping on the job.
- Falsifying a time card or other record or giving false information to anyone whose duty is to make such record.
- Being repeatedly or continuously absent or late, being absent without notice or satisfactory reason or leaving one's work assignment without appropriate authorization.
- Conducting oneself in any manner that is offensive, abusive or contrary to reasonable community standards and expectations of public employees.
- Engaging in any form of harassment including sexual harassment.
- Misusing, misappropriating, or willfully neglecting Town property, funds, materials, equipment or supplies.
- Unlawfully distributing, selling, possessing, using or being under the influence of alcohol or drugs when on the job or subject to duty.

- Fighting, engaging in horseplay or acting in any manner which endangers the safety of oneself or others. This includes acts of violence as well as threats of violence.
- Stealing or possessing without authority any equipment, tools, materials or other property of the Town or attempting to remove them from the premises without approval or permission from the appropriate authority.
- Marking or defacing walls, fixtures, equipment, tools, materials or other Town property, or willfully damaging or destroying property in any way.
- Willful violation of Town rules or policies.

### **Section 31: Employee Termination Process<sup>11</sup>**

The Town of \_\_\_\_\_ has adopted an employment termination process. Most often, employee conduct that warrants termination results from unacceptable behavior, poor performance, or violation of the Town's policies, practices, or procedures. However, termination may result from conduct that falls outside of those identified areas. The Town need not utilize this termination process but may take whatever action it deems necessary to address the issue at hand.

The Town also retains the right to unilaterally eliminate a position and thus terminate employment or reduce the work hours for some or all employees due to economic conditions, shortage of work, organizational efficiency, changes in departmental functions, reorganization or reclassification of positions resulting in the elimination of a position or for other related reasons. In such case, this termination process does not apply.

Probationary employees are not subject to the Town's termination process. Notwithstanding any other provision of this policy, an employee terminated during the probationary period will have no right to appeal such termination.

An employee being considered for termination will be provided with a written notice. The notice will contain a brief statement of the reasons termination is being considered and the date, time and place of a pre-termination meeting with the employee's supervisor.

At the pre-termination meeting, the employee will be afforded an opportunity to present the employee's response to the reasons for termination. If the employee declines to attend the pre-termination meeting, the employee may submit written response to the pre-termination notice not later than the scheduled date of the meeting.

Within seven days of the date of the meeting, the supervisor will provide the employee with a written notice informing the employee whether he/she has been terminated. If the employee has been terminated, the notice will provide the general reasons therefore and will also inform the employee of the opportunity to request a post-termination hearing before the selectboard by giving written notice of such request to the supervisor within seven days. The employee will be informed that the employee's failure to make a timely request for a post-termination hearing will result in such hearing being waived.

If a request for a post-termination hearing is made, the selectboard will provide the employee with a notice informing the employee of the date, time, and place of the post-termination hearing

before the selectboard. The notice will inform the employee of his or her right to be represented by counsel, to present and cross-examine witnesses and to offer supporting documents and evidence. The notice of will also inform the employee of his or her right to have the hearing conducted in executive session in accordance with 1 V.S.A. § 313.

At the post-termination hearing, the employee will be afforded the opportunity to address the basis for termination by hearing and examining the evidence presented against the employee, cross-examining witnesses and presenting evidence on his/her behalf. The selectboard will make such determinations as may be necessary in the event of evidentiary objections or disputes. When the hearing is adjourned, the Selectboard, under the authority granted by 1 V.S.A. § 313(e), will consider the evidence presented in the hearing in deliberative session.

The Selectboard will render a written decision within fourteen days after close of the hearing, unless otherwise agreed upon by the parties.

**Section 32: Severability**

If any provision of this personnel policy or the application hereof to any person or a circumstance(s) is held invalid, this invalidity does not effect other provisions or applications of the personnel rules which can be given effect without the invalid provision or application. For this purpose, this personnel policy is severable.

**ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.**

**SIGNATURES of SELECTBOARD:**

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## **Addendum A: Personnel Acknowledgement**

I, \_\_\_\_\_, acknowledge that:

- A. I received a copy of the Town's personnel policy on \_\_\_\_\_;
- B. I have been given an opportunity to ask questions about said policy and I have been provided with satisfactory information in response to my questions;
- C. I understand that the language used in this personnel policy is not intended to create, nor should it be construed to create, a contract of employment between myself and the Town;
- D. I acknowledge that the Town reserves the right to add, amend or discontinue any of the provisions of this policy for any reason or none at all, in whole or in part, at any time, with or without notice;
- F. I acknowledge that I understand the Town's personnel policy and I agree that I will comply with all of its provisions.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

## VLCT MODEL PERSONNEL POLICY EDITORIAL NOTES

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### <sup>1</sup> **At-Will Employment**

Under Vermont law, the employment relationship is presumed to be “at-will,” which means that it is terminable at any time, for any non-discriminatory reason or for no reason at all. However, the at-will presumption can be overcome, for example, by the existence of a statute, charter, collective bargaining agreement or personnel manual or policy inconsistent with an at-will relationship. If a contract or policy specifies that an employee may only be fired for “good cause” or specifies grounds for which the employee can be fired, then termination can only take place if good cause or the appropriate grounds are found after due process.

With respect to personnel policies, they may be used as evidence that the employment contract requires good cause for termination. Moreover, personnel policies that contain progressive disciplinary policies can be sufficient to require an employer to terminate an employee only for cause and policies which expressly or impliedly include a promise of specific treatment in specific circumstances may also create an enforceable contract. If an employer’s personnel policies contain any reference to just cause for dismissal or the types of conduct that would warrant dismissal, it is possible that the at-will status has been altered. This may be the case even if the employer’s manual contains disclaimer provisions pertaining to preservation of the at-will status of its employees. Courts will not allow employers to have it both ways.

In other words, if there are disciplinary procedures and specific conduct/discipline provisions in the policies, the mere inclusion of boilerplate provisions that the employee relationship is at-will will not automatically preserve the at-will status. Courts will look to the manual in its entirety, together with the parties’ reasonable expectations and norms of conduct in the workplace to determine at will status. If the employer’s personnel policies are definitive in form and demonstrate intent on the employer’s part to bind itself, there is a strong argument that the at-will status has been modified.

The issue of whether the adoption of a personnel policy is advisable is often confusing for municipalities. This is because there is a tension between the need to clearly establish work rules and policies concerning hiring, promotion, and discipline in order to have a maximally productive and well managed work force, and the concern that the creation of such detailed standards will destroy the at-will employment relationship that allows a municipality to discharge an employee without process, and for any or no cause.

While each municipality must strike this balance for itself, there may arguably be a lower risk of exposure to wrongful discharge claims where employers have adopted and followed clear and detailed personnel policies, as opposed to those employers that have no formal employment procedures or policies. That is, with no written rules or procedures, an employee who is discharged may be more likely to feel as though he was given arbitrary or discriminatory treatment.

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To this end, this model personnel policy provides progressive discipline and termination procedures. Given the high probability that a municipal employee's at-will employment status has been modified by statute, charter, collective bargaining agreement, practice, personnel manuals or town policies, VLCT recommends affording all non-probationary employees the termination process as outlined in Section 32. Nevertheless, Section 1 expressly declares employment with a Town to be at-will as it may provide some protection from wrongful discharge liability.

For those employers who seek to preserve the at-will status for employees who are not otherwise protected by statute, charter, collective bargaining agreement or other contract, their personnel policies must be carefully drafted (with the assistance of counsel) to avoid any alteration of the at-will status.

## <sup>2</sup> **Persons Covered**

Unless provided otherwise in a municipal charter, the municipal clerk and municipal treasurer are independent officials answerable only to the electorate. By statute, the municipal clerk and treasurer may appoint assistants. These statutory assistants serve at the pleasure of the municipal clerk and treasurer and may hold office for the duration of the clerk or treasurer's term or until the clerk or treasurer revokes such appointment.

These statutory assistants report to the officer appointing them and not to the selectboard. Accordingly, though they are compensated by the town for their work, statutory assistants would not be employees for purpose of this policy.

While not required to do so, some clerks and some treasurers may wish to be included in the town's personnel policies or may wish to have their assistants included. In such instances VLCT recommends a written agreement between the clerk or treasurer and selectboard outlining which provisions of the personnel policy apply to them and/or their assistants.

## <sup>3</sup> **Tobacco Use**

With respect to municipalities, the state law prohibits the possession of lighted tobacco products in "the common areas of all enclosed indoor places of public access and publicly owned buildings and offices." 18 V.S.A. § 1742. Place of public access includes "any place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which the general public has access or which the general public uses, including buildings, offices, means of transportation, common carrier waiting rooms, arcades, restaurants, bars and cabarets, retail stores, grocery stores, libraries, theaters, concert halls, auditoriums, arenas, barber shops, hair salons, laundromats, shopping malls, museums, art galleries, sports and fitness facilities, planetariums, historical sites, common areas of nursing homes, hospitals, resorts, hotels and motels, including the lobbies, hallways, elevators, restaurants, restrooms, cafeterias, and buildings or facilities owned or operated by a social, fraternal, or religious club." 18 V.S.A. § 1741(2).

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The prohibition against any tobacco use (lighted or unlighted) in any “publicly owned buildings, offices and enclosed areas, *and in all Town vehicles*” is broader than state law. Nonetheless, VLCT recommends a prohibition against all tobacco use and a prohibition against use in Town vehicles” in order to prevent the effects of second hand smoke and to project a professional image in the workplace.

#### <sup>4</sup> **Internet and Electronic Mail Policy**

This policy, while not required by statute, is important in informing employees what constitutes acceptable and prohibited behavior when using the municipal computer system, resolving reoccurring issues concerning retention of computer passwords, and eliminating any expectation of privacy employees may have if a municipality intends to monitor electronic communications.

#### <sup>5</sup> **Retention Schedule**

Copies of the State of Vermont Retention Timetable for Municipal Records are available from the Department of Buildings and General Services, (802) 828-3314.

#### <sup>6</sup> **Benefits**

Most municipalities are required to participate in the following benefits programs: workers’ compensation, unemployment compensation, and the Vermont Municipal Retirement System (VMERS). These programs are available to both employees and elected officers who meet the program requirements.

Beyond these required benefits, it is up to a municipality’s legislative body to determine which, if any benefits to provide to its employees and under what conditions. Benefits commonly offered to municipal employees include health insurance, life insurance, and long and short-term disability. Boards considering adopting this model policy will need to draft language for this section that specifies the benefits that are offered.

Most towns choose to extend employee benefits equally to both employees and elected officers who meet the eligibility requirements.

#### <sup>7</sup> **Holidays**

The holidays listed are those legal holidays observed by all state departments, agencies and offices pursuant to 1 V.S.A. § 371. Municipalities are not obligated to observe these holidays and its legislative body may modify this list as it deems appropriate.

#### <sup>8</sup> **Short-term Family Leave**

The benefits conferred by this policy track State law and apply to those same Towns covered under the Vermont Parental and Family Leave Act. 21 V.S.A. § 472a.

#### <sup>9</sup> **Exempt Employees**

The Fair Labor Standards Act (FLSA) is a federal law establishing employment standards for hours worked, overtime, wages, child labor and prohibiting sex-based discrimination. The FLSA does not apply to all municipal employees. Those exempted from the Act include volunteers, independent contractors, elected officials and their personal staff members and appointed

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officials in policy-making positions, certain recreational employees, certain trainees, and certain “white collar” positions that meet the following criteria:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

#### <sup>10</sup> **Overtime**

Under the Fair Labor Standards Act (FLSA), municipalities have the option of providing employees with paid time off in lieu of monetary overtime compensation. Compensatory time must be earned at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by the FLSA.

Under the FLSA, employees engaged in public safety, emergency response or seasonal activities cannot accrue compensatory time in excess of 480 hours. All other nonexempt employees cannot accrue more than 240 hours of compensatory time for hours worked. Accrued overtime hours in excess of 480 and 240 must be paid at one and one-half times the non-exempt employee’s regular rate of pay at that time, respectively.

The model policy sets a much lower limit for accrued compensatory time (forty hours). Municipalities may set the limit higher, but may not exceed the statutory limits.

#### <sup>11</sup> **Employee Termination Process**

By statute, many town officials (town manager, zoning administrator, and appointed road commissioner to name a few) can only be removed for just cause. Prior to finding cause, these officers must be afforded the due process protections described in this section. As described above, VLCT recommends affording *all* employees the due process protections described in this section as we believe, on the balance, that there is a lower risk of exposure to wrongful discharge claims where employers have adopted and followed clear and detailed personnel policies, including policies for progressive discipline and termination.

Nonetheless, adopting progressive discipline and termination processes is not without some legal risk. Municipalities that adopt such processes as part of their employment policies must follow them scrupulously. VLCT recommends discussing the issue of termination and progressive processes with the municipal attorney prior to the adoption of these model policies.