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NO. 89635-6

SUPREME COURT OF THE STATE OF WASHINGTON
[Court of Appeals No. 69295-0-1]

TIMOTHY P. MERRIMAN

Petitioner,

v.

WHATCOM COUNTY,

Respondent.

AMENDED PETITION FOR REVIEW

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I. IDENTITY OF MOVING PARTY

This motion is brought by Timothy P. Merriman, the Petitioner who is Pro Se, and asks this Court to accept review of the Court of Appeals decision and denial of reconsideration designated in Part II.

II. COURT OF APPEALS DECISION

Merriman v. Whatcom County, No. 69295-0-I (Wash. Ct. App. Sept. 9, 2013) *Recons. Denied* Oct 22, 2013. (App. A and B)

III. ISSUES PRESENTED FOR REVIEW

1. Whether the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals and a decision of the Supreme Court regarding the need for the Court to construe and enforce acts of a legislative body.
2. Whether the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals regarding Merriman’s August 25, 2006 request for an extension of leave.
3. Whether the decision of the Court of Appeals is in conflict with a decision of the Supreme Court regarding constructive discharge.

IV. STATEMENT OF THE CASE

1 The appeal was from dismissal of a hostile work environment
2 claim under CR 12(b) on the pleadings. The COA affirmed dismissal on the
3 basis that failure to provide a private office accommodation to remedy the
4 hostile environment was not an ongoing violation (COA Op. pg. 5, Fn 1,
5 pg. 7), rather than a review of the pleadings. Claims of constructive
6 resignation and failure to accommodate with leave and a private office
7 were later subjected to summary judgment dismissal. The COA affirmed
8 all dismissals and denied reconsideration.

9
10 Events on and after Sept. 22, 2006 were outside of the limitations
11 period. Merriman is only seeking review of the claims of failure to
12 accommodate with leave, and constructive discharge. Both of those claims
13 can be proved by events on and after Sept. 22, 2006.

14
15 Merriman worked for the County (Whatcom County) from Nov. 1,
16 1989 until Sept. 26, 2006 as an unrepresented at-will employee. Merriman
17 shared a workspace with two sisters and supervised them. They had a case
18 against the County and they started to make false accusations against
19 Merriman in an attempt to destroy his credibility as a County witness in
20 that case.

21
22
23 As a result, Merriman suffered two psychiatric breakdowns in Mar.
24 2003 and more throughout 2003; and was diagnosed and started on
25 psychotropic drugs. He informed his two immediate supervisors the day
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27

1 after the first breakdown that he was being treated with psychotropic
2 medications due to the working conditions with the sisters. He told his
3 immediate supervisors he needed to be moved from the shared workspace
4 to avoid breakdowns.

5
6 Over time Merriman developed and was diagnosed with anxiety,
7 stress, depression, bipolar affective disorder, posttraumatic stress disorder,
8 labile hypertension and the inattentive type of attention deficit disorder.
9 His health care providers notified the County in medical certifications of
10 all of these conditions and that several of them were life-time conditions.
11 (CP 660, 664, 678, 684-685, 694-695, 699-700, 698, and 595)

12
13 Merriman started an FMLA leave Mar. 13, 2006 supported by a
14 medical certification from his psychiatric provider characterizing his
15 serious medical condition for FMLA (Family Medical Leave Act) as
16 chronic which includes episodic in the FMLA definition. She stated
17 "lifetime" for the duration. (CP 694-696)

18
19 Merriman's leave was granted on the basis of Sec. 6.9 of the
20 Unrepresented Resolution ("A Resolution in the Matter of Adopting a
22 Salary Schedule and Policies for Unrepresented Whatcom County
23 Employees for the Year 2006" (App. D, CP 398-413)) "Leave for Illness or
24 Injury". (App. D, CP 407) On Aug. 25, 2006 when he requested to extend
25 the leave 6 weeks with a combination of paid and unpaid leave to fill out
26
27

1 the 6 weeks to commence Aug. 28 with a return to work on Oct. 9,
2 Unrepresented Resolution 6.9 governed both the paid and unpaid portions
3 of his request. It provides the policy and procedure for both, and by its
4 terms requires no medical documentation.

5
6 The County responded to this request by approving the use of
7 accrued leave using Unrepresented Resolution 6.9 with no medical
8 documentation. But The County would not use Unrepresented Resolution
9 6.9's unpaid leave provision at all. Instead, HR representative Keeley
10 attempted to change the terms and conditions of Merriman's employment
11 and use Sec. 113.2 of the Employee Handbook's ("Whatcom County
12 Employee's Personnel Handbook") unpaid "Disability Leave" (App. E, CP
13 454-455), and require medical documentation including diagnoses. (CP
14 711, CP 604, form example at CP 575 with the diagnosis redacted) This
15 was despite the fact that Employee Handbook 113.2 does not apply to
16 unrepresented employees like Merriman.

17
18 Keeley attempted to get Merriman to agree to Employee Handbook
19 113.2 and demanding diagnostic information on Aug. 30. (CP 711) She
20 persistently sought to make this change through Sept. 22 (CP 609), Sept. 8
22 (CP 602), Sept. 15 (CP 604), Sept. 19 (CP 605), and Sept. 20 (Original
23 message in CP 606).

24
25 Employee Handbook 113.2 leave has a prominent provision calling
26
27

1 for automatic termination if the employee doesn't return to work in 89
2 days (App. E, CP 454-455), which would appear to be nondiscriminatory.
3 It specifically says no benefits are provided and there is no provision to
4 earn back days used by periods of returning to work. (App. E, CP 454-455)

5
6 Unrepresented Resolution 6.9 (App. D, CP 407), which applied to
7 Merriman, offered up to 12 months leave, of which he had about 6 months
8 left. This leave could be earned back by periods of returning to work. It
9 also offered benefits for Merriman and his family through Unrepresented
10 Resolution 8.1.1 if needed. (App. D, CP 408) Periods of returning to work
11 were likely with his episodic conditions.

12
13 On Sept.20, the County represented that Merriman's paid leave
14 would be exhausted Sept. 22 (Original message in CP 606); and did not
15 place him in any type of authorized leave status despite his Aug. 25
16 request for unpaid leave. (Original message in CP 572) This left him
17 AWOL (absent without leave) starting Sept. 22, according to two
18 communications from the County: the one on Sept. 20 (Original message
19 in CP 606), and repeated on Sept. 27. (CP 617)

20
22 Merriman wrote Keeley on Sept. 22, "time was critical" that he
23 receive an answer to his Aug. 25 unpaid leave request (Original message
24 in CP 606) "now" from the County Executive and his department head
25 using Unrepresented Resolution 6.9. (CP 607-608) Keeley indicated that

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27

1 up to 89 days are routinely granted (CP 609 and CP 733, lines 10-25) and
2 Merriman was asking for significantly fewer days. Merriman also
3 indicated he would not be submitting the medical documentation including
4 diagnoses that Keeley had been demanding. (CP 711, CP 604, form
5 example at CP 575 with the diagnosis redacted)

6
7 Keeley's Sept. 22 reply said she was interested in a satisfactory
8 resolution of the question of appropriate leave status and accompanying
9 documentation. She also said "We received Mr. Merriman's email and will
10 review it in light of our policies and procedures for managing extended
11 leaves of absence." She went on to describe that usually meant using
12 Employee Handbook 113.2 leave. (CP 609) She said she hoped to have an
13 answer by Sept. 28, which is a statement of an indeterminate time; and she
14 did not place Merriman in any authorized leave status such as unpaid
15 administrative leave until the reply. Merriman was left in an AWOL status
16 for an indeterminate time.

17 There was no point to replying to this, since Keeley had already
18 specified that the medical documentation required included a statement of
19 Merriman's diagnoses (CP 711, CP 604, form example at CP 575 with the
20 diagnosis redacted), and this letter and the previous communications made
22 it clear that they intended to use Employee Handbook 113.2.

23
24 The County did not process Merriman's August 25, 2006 request
25 for unpaid leave at all, according to Goens' declarations. (CP 307, lines 7-
26
27

1 9; CP 597, lines 17-18) Keeley said, "Had he provided current medical
2 information and allowed us to process his request for unpaid leave ... we
3 just never got the information we needed to process his request." (CP 730,
4 lines 11-15) Yet at CP 730, lines 16-17, she testified that no medical
5 information was required by Unrepresented Resolution 6.9.

6
7 The indeterminate time until Merriman was to obtain an answer
8 specified in her reply without administrative leave made Merriman believe
9 that the County had just changed tactics to fire him because the first plan
10 of switching him to Employee Handbook 113.2 with an 89 day
11 termination provision (Exhibit E, CP 454-455)) had not succeeded.
12 Merriman realized that just like the 89 day termination plan, it would
13 appear to be nondiscriminatory if they could fire Merriman for the cause
14 of being AWOL.

15
16 The reason Merriman feared being fired was Employee Handbook
17 114.0 (T), "Absence from work other than on authorized leave", which
18 says, "Absence from work other than on authorized leave shall be treated
19 as leave without pay, and may be grounds for disciplinary action."
20 Unauthorized absence from duty may result in separation from service."
21 (App. E, CP 458).

22
23
24 Merriman read this as disciplinary action or separation. Although
25 disciplinary action would require an investigation, notice, and hearing,
26
27

1 Merriman had experienced the County failing to follow that procedure
2 when he was previously fired on the spot for alleged misconduct without
3 any due process. (See Employee Handbook 116.0 "Disciplinary
4 Procedures", which uses the phrase "termination of employment" and not
5 "separation"". (App. E, CP 460)) Based on Merriman's previous experience
6 of being fired for cause without any due process, which the County
7 explained was because he was an at-will employee, he had no reason to
8 expect it for this AWOL status, regardless of how Employee Handbook
9 114.0 (T) "Absence from work other than on authorized leave" is
10 understood.

11
12 Employee Handbook 100.4 "Definitions" defines "separation" as "The
13 removal of an employee from the payroll for either voluntary or involuntary
14 reasons to include dismissal, resignation, layoff, retirement, or death." (App. E,
15 CP 437)

16
17 Employee Handbook 100.4 "Definitions" defines "dismissal" as "The
18 involuntary termination of an employee regardless of the reason." (App. E,
19 CP 435)

20
22 Employee Handbook 100.4 "Definitions" defines "disciplinary action"
23 as "The action taken to discipline an employee ranging from a verbal
24 reprimand up to and including discharge." (App. E, CP 435)

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Employee Handbook 114.1 "Disciplinary Action" says
"Employees who violate any of the work rules set forth in Section 114.0
shall be subject to disciplinary action up to and including discharge."
(App. E, CP 458)

On Sept. 24, his psychiatric provider agreed to sign a fit for duty to
return to work on October 9. (CP 581) With that done Merriman had
fulfilled everything the County required for him to return to work on
October 9; except that he wouldn't accept the detrimental change in the
terms and conditions of his employment.

On Sept. 26, three full workdays after his demand for an answer
regarding the approval of unpaid leave and his AWOL date, the County
had not placed him in any authorized leave status. Because of that, he was
subject to summary termination without prior notice under the County's
AWOL policy. (App. E, CP 458 and "separation" definition at (App E, CP
437)

County policy allowed denial of COBRA (Consolidated Omnibus
Budget Reconciliation Act) coverage and conversion privileges for
employee misconduct. (App E, CP 475) Fearing such a denial because he
was AWOL, he submitted a resignation on Sept. 26, 2006 to cut off the
County's ability to fire him as AWOL. This proves the involuntariness of
his resignation.

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On Sept. 26 Merriman’s resignation was sent to Keeley and Dan Gibson, in-house counsel to HR. (CP 607-608) It was comprehensive enough to cover the attempts to fire him, and failures to accommodate him. It stated it was not inclusive.

After his resignation the County sent letters dated Sept. 27 (CP 617-619) and Oct. 5 (CP 620) from HR’s Employee Relations Manager Wefer-Clinton, purporting to offer leave if he withdrew his resignation. Both letters omitted Unrepresented Resolution 6.9 unpaid leave (App. D, CP 407) and accommodation leave under the ADA/WLAD, either of which could have accommodated Merriman's disability with leave. They didn't even include Employee Handbook 113.2 unpaid "Disability Leave" (App. E, CP 454-455), which was the only unpaid leave Merriman had been offered prior to his resignation. (See App. H for a table identifying each offer, its source, and why it did not work to provide Merriman leave.)

Both letters were copied to Dan Gibson and Jackson. Wefer-Clinton and Gibson knew that Unrepresented Resolution 6.9 unpaid leave (App. D, CP 407) applied to Merriman, and that it was not offered to him. Wefer-Clinton was the "Originator" of the "The County Council Agenda Bill" that resulted in passage of the 2006 Unrepresented Resolution, and Gibson reviewed it for the Prosecutor's Office. (CP 398)

1 Merriman discovered long after his Sept 26 resignation, and after
2 both offers to withdraw his resignation had expired, that the County's
3 representation that he went AWOL on Sept. 22: first on Sept. 20, (Original
4 message in CP 606), and repeated on Sept. 27. (CP 617), were
5 misrepresentations. Unknown to him at the time, Merriman was actually
6 on paid leave when he resigned, and could have remained so until Sept.
7 28. (CP 610 and payroll records)

8
9 **V. Argument Why Review Should Be Granted.**

10
11 **1. The decision of the Court of Appeals is in conflict with**
12 **another decision of the Court of Appeals, and a decision of the**
13 **Supreme Court regarding the need for the Court to construe and**
14 **enforce acts of a legislative body.**

15 The legislative body of a local government may act by resolution
16 or by ordinance. LaMon v. Westport, 22 Wn. App 215, 219 (1978). It is
17 within the Court's purview to construe acts of a legislative body, and to
18 determine and carry out the intent of the legislative body Hale v. Wellpinit
19 School Dist. No 49, 16,5 Wn 2d 494 , 509 ¶22 (2009).

20 Here the Court of Appeals avoided construing the resolutions of
21 the County Council. The Employee Handbook had been adopted and last
22 amended prior to November 1, 1989 by resolution. The arguments in the
23 Amended Motion for Summary Judgment briefs were based on whether
24 Unrepresented Resolution 6.9 unpaid "Leave for Illness or Injury" (App.
25

1 D, CP 407) was the only unpaid leave provision for illness or injury
2 applicable to Merriman to the exclusion of Employee Handbook 113.2
3 unpaid "Disability Leave" (App. E, CP 454-455), which was the only
4 unpaid leave offered to him before he resigned. (CP 714)

5
6 To properly decide this case, the Court of Appeals needed to
7 determine and enforce the intent of the County Council which it did not
8 do. The Court of Appeals obviously didn't construe Employee Handbook
9 113.2 unpaid "Disability Leave" (App. E, CP 454-455) because it wrongly
10 characterizes it as a paid leave (COA Op. 3); nor Unrepresented Resolution
11 6.9 because it failed to recognize that it requires no medical
12 documentation and was the only unpaid leave applicable to Merriman. The
13 Court of Appeals discusses unpaid leave generally consistent with the
14 County's position that "the two leave clauses are not separate and distinct".
15 (RB 9)

16
17 The 2006 Unrepresented Resolution 's preamble says "...
18 WHEREAS, the Whatcom County Council hereby adopts the following
19 policies for administration of personnel issues affecting unrepresented
20 employees; ... NOW, THEREFORE, BE IT RESOLVED, that the
22 Council intends that the Administration should follow the policies set forth
23 below..." (App. D, CP 399), which included Unrepresented Resolution 6.9.

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2. The decision of the Court of Appeals is in conflict with another decision of the Court of Appeals regarding Merriman's August 25 request for an extension of leave.

The Court of Appeals says "Merriman also argues that County failed to accommodate him by not allowing him to take unpaid leave without providing further medical information. He fails to articulate why his disability limited him from providing further medical information and why such an accommodation was medically necessary for his disability."(COA Op.13, Fn 2)

This was the only reason the Court of Appeals gave for denying Merriman's claim that failure to extend his leave with Unrepresented 6.9 unpaid "Leave for Illness or Injury" (App. D, CP 407) was a failure to accommodate, despite finding that Merriman had numerous disabling conditions and that "Merriman notified Whatcom County that his health care provider believed these were lifetime conditions." (COA Op. 1) Notice was accomplished by numerous certifications from his providers starting from 2003 (CP 660, 664, 678, 684-685, 694-695, 699-700, 698, and 595), and his communications with his supervisors. CP 694-695, 699-700, 698, 595 stated his need for the leave he was seeking to extend.

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The County was insisting on a statement of Merriman's diagnoses.
(CP 711, CP 604, form example at CP 575 with the diagnosis redacted)
The duration of the leave, until Oct. 9, was already known from the Aug.
25 leave request. (CP 572) WLAD case law does not require specific
conditions/diagnoses. "In order to satisfy the 'notice' element, an employee
is not required to tell the employer about the full nature and extent of the
disability, only that a disability requiring accommodation exists."
[Citations omitted] *Sommer v. DSHS*, 104 Wn. App. 160, 173 (2001)

The Court says "it was the County's standard practice to require
medical documentation to justify unpaid leave, and cannot be
characterized as discriminatory." (COA Op. 11) The County has no such
authorized practice, as all personnel policies must be approved by the
County Council and are published in resolutions. (App. C, WCC
3.04.040(M)(2) Personnel System - "Authority and functions")
Unrepresented Resolution 6.9 "Leave for Illness or Injury" (App. D, CP
407) states the policy and procedure for granting unpaid medical leaves to
unrepresented employees, and it does not, by its terms, require any
medical documentation at all. (App. D, CP 407) HR representative Keeley
admitted that in her deposition. (CP 730, lines 16-17) When medical
documentation is required, it is specified such as in Unrepresented

1 Resolution 6.1.3. (App. D, CP 404) In addition, Conroy v. New York State
2 Department of Correctional Services, 333 F.3d 88, 95 (2d Cir. 2003) holds
3 "that requiring a general diagnosis is sufficient to trigger the protections of
4 the ADA" which requires that medical inquiries be job-related and
5 consistent with business necessity. The County has not articulated how a
6 policy requiring diagnoses, even if it had existed in a County resolution, is
7 job-related and consistent with business necessity.
8

9
10 Kimbro v. Atlantic Richfield Co., 889 F.2d 869, 878-879 (9th
11 Cir.1989), *cert. denied*, 498 US 814, 111 (1990), a WLAD diversity case,
12 imposed a duty to grant leave from the employer's own leave program
13 where the leave could have plausibly enabled an employee to adequately
14 perform his job upon return to work, even though Kimbro hadn't asked for
15 leave before being terminated. Kimbro had a chronic episodic condition
16 with episodes that could last several months, which were then followed by
17 long periods of remission, like Merriman. It was entirely plausible that
18 Merriman could perform his duties starting Oct. 9. Merriman always
19 received excellent "Professional Employee Performance Reviews" even
20 with his disabilities, which had existed since 2003. The most recent review
21 was for the period ending Dec. 31, 2005 (CP 702-708), shortly before he
22 went out on leave.
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In Martini v. Boeing Co., 88 Wn. App. 442, 448 and 452 (1997),
aff'd on other grounds 137 Wn.2d 358 (1999), the failure to accommodate
occurs each day, and a resignation was not a bar to recovery.

The County did not require medical documentation of any kind for
the paid portion of Merriman's Aug 25 leave request, even though its
approval included sick leave. Unrepresented Resolution 6.1.3 (App. D, CP
404) allows the County to ask for it. If sick leave was approved without
medical documentation, what possible justification for diagnoses for the
unpaid portion exists as job-related and consistent with business necessity?

The affirmation of the dismissal of his claim of failure to
accommodate his disability with leave from the County's own leave
program because he didn't provide specific diagnoses clearly had no basis
in law.

The most analogous public policy against requiring diagnoses for
leave is the FMLA (Family Medical Leave Act) which prohibits an
employer from requiring diagnoses. The FMLA does this by requiring the
use of a model form and prohibiting the employer from asking anything
not on it. The diagnosis is not included in the form. A properly completed
form (per Ann Lynch, US Department of Labor FMLA investigator in
Seattle (206) 398-8043), without specifying a diagnosis, is CP 694-696.

1 Washington's 2006 Family Leave certification RCW 49.78.270 largely
2 models the FMLA and doesn't require a diagnosis. The FMLA form
3 currently only permits the provider to state a diagnosis but does not allow
4 the employer to require one. (USDOL Form WH-380-E Revised January
5 2009) This is really no different than the earlier FMLA form because some
6 providers chose to state diagnoses even though the employer couldn't
7 require them to. (See CP 660-661 for example) All three use the phrase
8 "medical facts" in making inquiry of the medical provider. What good
9 does that public policy serve if, after the 12 weeks of FMLA expire, the
10 employer is free to demand diagnostic information?

11
12 Regarding Merriman's FMLA certification to begin his Mar. 13,
13 2006 leave Keeley says, "I understand you were told you did not need to
14 provide a specific diagnosis, but without a clear description of the medical
15 facts to support an FMILA certification, we are unable to determine if
16 your condition meets the criteria under FMLA." (CP 701) She was given a
17 clear statement of the medical facts that allowed her to determine his
18 eligibility; it just didn't include his diagnoses. (CP 694-696)

19
20 The County's reaction to the lack of a diagnosis was to demand
22 that Merriman submit a general medical release and submit to an
23 evaluation by psychologist Zolt. When Merriman objected (CP 699-700),
24 he was then to submit a general medical release to its EAP (Employee
25 Assistance Program) psychologist and meet with EAP psychologist Foster.
26
27

1 (CP 701) All of this was prohibited by FMLA. With the help of Ann
2 Lynch, US Department of Labor FMLA investigator, Merriman was able
3 to hold the County to the FMLA, and never met with the County's
4 psychologists.

5
6 Employers, like the County, are not medical experts and they have
7 no basis on which to evaluate the significance of a diagnosis as it affects
8 an employee's need for leave. That should be left to treating health care
9 providers.

10
11 Keeley was using a lack of diagnosis on a leave request as a
12 pretext to have Merriman examined for "cognitive ability and capacity or
13 incapacity to work", and not an evaluation of his treatment plan which
14 would have some relevance his need for leave. (CP 701) The County
15 denied interest in Merriman's "treatment plan" (CP 701), which raises the
16 question of what they were actually interested in. Merriman believed she
17 was seeking information related to whether Merriman should remain
18 employed, and not to the leave request.

19
20 **3. The decision of the Court of Appeals is in conflict with a**
21 **decision of the Supreme Court regarding constructive discharge.**

22
23 The Court of Appeals was wrong in concluding the Sep 26
24 resignation was because "Merriman believed that he would be fired when
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1 his paid leave status expired" (COA Op. 10), because it had already noted
2 his paid leave had expired on Sep 22. (COA Op. 2)

3
4 The Court of Appeals was also wrong in saying "Merriman's
5 constructive discharge claim fails for several reasons. First, the purported
6 intolerable conditions were not the true reason for his resignation. Second,
7 a reasonable person would not have felt compelled to resign under the
8 circumstances." (COA Op. 11) The resignation is involuntary or coerced if
9 the employer deliberately brings about the intolerable condition, without
10 regard to the employer's mental state as to the resulting consequence, by
11 discriminating in compensation or in other terms or conditions of
12 employment making it so intolerable that a reasonable person would have
13 felt compelled to resign in the circumstances.. Bulaich vs. AT & T
14 Information Systems, 113 Wn.2d 254, *Recons. denied* November 8, 1989.

15
16 Merriman resigned because of the County's deliberate
17 discrimination, and a reasonable person would feel compelled to resign.
18 The County created a discriminatory vise keeping him in an indefinite
19 state of AWOL and subject to summary dismissal without prior notice,
20 with the possible loss of COBRA because it wouldn't grant leave.

21
22
23 Bulaich at 263 allowed consideration of post-resignation letters
24 such as Merriman received on deliberateness of the employer. Martini,
25 *supra* at 454 allows consideration on liability. Here the letters were
26
27

1 deliberately deceitful in falsely claiming to offer a comprehensive set of
2 leave options to hide the discrimination. They fooled the Court of
3 Appeals.
4

5 Deliberateness is also shown by the numerous attempts to get
6 Merriman to agree to the change the terms and conditions of his
7 employment starting from Aug. 30. (CP 711) and lasting to Sept. 22. (CP
8 609)
9

10 In addition, a resignation/retirement obtained by misrepresentation
11 regarding the availability of leave to a civilian employee is involuntary
12 and constructive, regardless of the subjective intent of the employer.
13 Scharf v. Department of the Air Force, 710 F. 2d 1572, 1574 - 1575 (Court
14 of Appeals, Federal Cir 1983).
15

16 **VI. Conclusion**

17 The Supreme Court should do a de novo review of the dismissals
18 of Merriman's claims of failure to accommodate with leave and
19 constructive discharge.
20

21 DATED this 9th day of January, 2014.
22

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24 
25 _____
26 Timothy P. Merriman, Pro Se
27

APPENDIX

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- A. Decision of the Court of Appeals
- B. Order denying motion for reconsideration
- C. Copy of certified copy of chapter 3.04 of the Whatcom County Code. (Original was filed with the motion for reconsideration.)
- D. A copy of "A Resolution in the Matter of Adopting a Salary Schedule and Policies for Unrepresented The County Employees for the Year 2006". (The annual Unrepresented Resolution.)
- E. A copy of "Whatcom County Employee's Personnel Handbook" as amended. (The Employee Handbook.)
- F. Copy of certified copy of Executive Order 02-01 concerning voluntary unpaid furloughs. (Original was filed with the motion for reconsideration.)
- G. 2006 Calendar.
- H. Table of reasons offers after resignation failed.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TIMOTHY P. MERRIMAN,

Appellant,

v.

WHATCOM COUNTY,

Respondent.

No. 69295-0-1

DIVISION ONE

UNPUBLISHED OPINION

FILED: September 9, 2013

CLERK OF COURT
STATE OF WASHINGTON
JUL 9 2013 10:01 AM
COURT OF APPEALS
DIVISION ONE

APPELWICK, J. — Merriman argues that his former employer, Whatcom County discriminated against him based on his disability, resulting in a hostile work environment, his constructive discharge, and failure to accommodate his known disability. We affirm.

FACTS

Timothy Merriman worked for Whatcom County (County) from November 1, 1989 until September 26, 2006. During his time with the County, Merriman supervised and shared a workspace with sisters Nicole Johnston and Heather Holestine. Over time, his relationship with the two women deteriorated and Merriman found it difficult, both psychologically and physically, to work with them.

Merriman suffered an emotional breakdown in March 2003 and needed to take time off work. He claimed this breakdown resulted from Johnston and Holestine's hostile treatment of him. Merriman was eventually diagnosed with depression, bipolar affective disorder, and attention deficit disorder. Merriman notified Whatcom County that his health care provider believed these were lifetime conditions. He also experienced anxiety and stress related to his work situation.

When Merriman returned to work, the County allowed him to relocate his office farther away from Johnston and Holestine. He was permitted to lock his office door and close the blinds, so he could have privacy and separation from the two women.

This accommodation was withdrawn in May 2005 when Holestine and two other witnesses filed a complaint claiming that Merriman had engaged in inappropriate behavior in his office. An administrative hearing panel found that the complaint was groundless, but the County required Merriman to move back into the shared workspace. The County also adopted a policy that all office doors and blinds must be kept open unless an employee was meeting with a client who requested they be closed. And, the County asked that Merriman engage in counseling.

Merriman worked from May 2005 until January 2006, when he suffered another psychiatric breakdown, which he claimed was a direct result of losing the accommodation. On January 30, 2006, Merriman requested that the accommodation be reinstated. He was allowed to move back into the separate office, but was not allowed to lock the door or close the blinds.

On March 9, 2006, the County granted Merriman's Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. §§ 2601-2654, request, and he began six weeks of leave. Merriman continued requesting leave in six and twelve week increments until his resignation in September 2006. In August, when he requested another six weeks of leave, Human Resources (HR) Representative Melissa Keeley informed Merriman that his vacation accruals would end on September 22, 2006. Keeley told Merriman that she needed documentation from his healthcare provider to justify unpaid disability leave.

Merriman believed that the County's unrepresented resolution 6.9 did not require him to submit additional medical information.

Merriman also drew Keeley's attention to employee handbook section 113.2, which stated that a leave of absence is limited to 89 days, and failure to return to work before the end of those 89 days will result in termination. Merriman believed the County wished to fire him when his paid leave expired. As a result, he resigned on September 26, 2006. The County sent two letters on September 27 and October 5, 2006, offering Merriman the opportunity to withdraw his resignation and outlining a number of leave options. Merriman did not return to work.

Merriman filed a complaint against Whatcom County on September 22, 2009, alleging damages resulting from a hostile work environment, wrongful discharge, and disability discrimination, among other claims. The County moved to dismiss Merriman's complaint under CR 12(c). It based its motion in part on the position that Merriman failed to allege any facts occurring within the three year statute of limitations for a hostile work environment claim. The trial court granted the County's motion and dismissed Merriman's hostile work environment claim with prejudice.

After the County's CR 12(c) motion, Merriman moved to amend his complaint to plead two additional causes of action: failure to accommodate and constructive discharge. The trial court granted Merriman's motion to amend. Whatcom County moved for summary judgment on Merriman's two amended claims. The County explained that the only act that occurred within the statute of limitations was a September 22, 2006, e-mail from Keeley attempting to clarify Merriman's disability

status and asking him to specify the number of days he was requesting as unpaid leave. The trial court granted the County's motion for summary judgment. Merriman appeals.

DISCUSSION

Merriman argues that the County discriminated against him based on his disability, resulting in a hostile work environment, his constructive discharge, and unreasonable failure to accommodate his disability. The County argues in response that the three year statute of limitations for discrimination claims bars us from considering many of Merriman's factual allegations.

Washington's Law Against Discrimination (WLAD), chapter 49.60 RCW, prohibits employment discrimination based on "the presence of any sensory, mental, or physical disability." RCW 49.60.030(1). The WLAD does not contain its own limitations period. Antonius v. King County, 153 Wn.2d 256, 261, 103 P3d 729 (2004). Discrimination claims must be brought within three years under the general statute of limitations for personal injury actions. Id. at 261-62; RCW 4.16.080(2).

We review a CR 12(c) dismissal de novo. M.H. v. Corp. of Catholic Archbishop of Seattle, 162 Wn. App. 183, 189, 252 P.3d 914, review denied, 173 Wn.2d 1006, 268 P.3d 943 (2011). A dismissal under CR 12(c) is appropriate only if it appears beyond a doubt that the plaintiff can prove no set of facts that would justify recovery. Id. In undertaking such an analysis, we presume the plaintiff's allegations to be true. Id. A CR 12(c) dismissal should be granted sparingly, only when the plaintiff's allegations show on the face of the complaint that there is some insuperable bar to relief. Id.

We also review summary judgment orders de novo. Hadley v. Maxwell, 144 Wn.2d 306, 310-11, 27 P.3d 600 (2001). In discrimination cases, summary judgment is often inappropriate, because the WLAD mandates liberal construction. Frisino v. Seattle Sch. Dist. No. 1, 160 Wn. App. 765, 777, 249 P.3d 1044, review denied, 172 Wn.2d 1013, 259 P.3d 1109 (2011). Evidence will generally contain reasonable but competing inferences of both discrimination and nondiscrimination that must be resolved by a jury. Id. Courts will, however, grant summary judgment when the plaintiff fails to raise a genuine issue of material fact on one or more prima facie elements. Id. All facts and reasonable inferences are viewed in the light most favorable to the nonmoving party. CTVC of Haw., Co. v. Shinawatra, 82 Wn. App. 699, 708, 919 P.2d 1243, 932 P.2d 664 (1996).

1. Hostile Work Environment

Merriman argues that the trial court erred in dismissing his hostile work environment claim.¹ Merriman filed his first complaint on September 22, 2009. Whatcom County maintains that no allegedly hostile act occurred between September 22 and September 26, 2006, when Merriman resigned. Therefore, the County argues, the Antonius rule is not triggered and the three year statute of limitations bars consideration of any facts occurring prior to September 22, 2006.

¹ Specifically, Merriman argues that the trial court improperly dismissed his hostile work environment claim by applying an erroneous per se rule that an employee must be physically present at work to make out such a claim. Merriman claims the court dismissed on this basis at oral argument. The oral argument transcript is not designated in the record and the trial court's written order indicates no such basis for dismissal. Regardless, we can affirm the trial court's decision on any basis supported by the record. Amy v. Kmart of Wash., LLC, 153 Wn. App. 846, 868, 223 P.3d 1247 (2009).

In Antonius, the plaintiff filed suit alleging that King County violated the WLAD by fostering and maintaining a sex-based hostile work environment. 153 Wn.2d at 260. The County moved for summary judgment, arguing that Antonius's suit was untimely as to events occurring more than three years before she filed suit. Id. The Washington Supreme Court rejected the continuing violation doctrine for hostile work environment claims, and instead adopted the U.S. Supreme Court's analysis in Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002). Id. at 269, 273.

In Morgan, the Court concluded that hostile work environment claims "are different in kind from discrete acts," because "[t]heir very nature involves repeated conduct." 536 U.S. at 115. A hostile work environment claim is composed of a series of acts that collectively constitute one unlawful employment practice. Id. at 117. Therefore, provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability. Id. The act must be, however, "part of the same unlawful employment practice." Id. at 122.

Under Morgan, then, a court's task is to determine whether the acts about which an employee complains are part of the same actionable hostile work environment practice, and if so, whether any act falls within the statutory time period. Id. at 120. The acts must have some relationship to each other to constitute part of the same hostile work environment claim. Id. at 118. If there is no relation, the act is no longer part of the same claim and the employee cannot recover for previous acts. Id.

Therefore, the question in Merriman's case is whether some act occurred on or after September 22, 2006, that was part of Whatcom County's allegedly hostile work environment practice. The four elements of a prima facie hostile work environment claim are: (1) the harassment was unwelcome, (2) the harassment was because the individual was a member of a protected class, (3) the harassment affected the terms and conditions of employment, and (4) the harassment is imputable to the employer. Antonius, 153 Wn.2d at 261. The third element requires that the harassment be sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment. Id. The employer's conduct must be both objectively abusive and subjectively perceived as abusive by the victim. Clarke v. Office of the Attorney Gen., 133 Wn. App. 767, 787, 138 P.3d 144 (2006).

Merriman alleges that the County created a hostile work environment by forcing him to work with Johnston and Holestine and denying the accommodation of locking his office door and closing the blinds. Merriman conceded at oral argument that no affirmative hostile acts occurred during the limitations period. He nevertheless argues that the County's continuing failure to remedy the allegedly hostile environment constitutes a hostile act under Antonius. He is unable to provide any authority from Washington or elsewhere that supports his argument.

The events that took place on September 22, 2006, and after cannot be categorized as part of an allegedly unlawful employment practice. On September 22, 2006, Merriman e-mailed HR staff expressing his concerns that employee handbook provisions meant his employment would terminate when he exhausted his paid leave.

He also stated his belief that the County had ulterior motives and hoped to fire him. He instructed the County to contact his attorney. That same day, Keeley e-mailed Merriman's attorney:

We received Mr. Merriman's e[-]mail and will review it in light of our policies for managing extended leaves of absence. We are presently unsure exactly how much unpaid leave Mr. Merriman is requesting. If he is able to specify the number of calendar days he wishes to be designated as unpaid leave, it would certainly assist our ability to respond. We hope to respond to him by next Thursday, September 28.

Our typical approach when FMLA leave or other accruals are close to depletion with no immediate prospect of the employee's return to work, is to communicate with the employee about his leave status, and inquire whether he wishes to request up to 89 days of unpaid leave that may be granted in the discretion of the County Executive. In the rare instance that the employee remains absent from work after the exhaustion of that period of leave granted in the discretion of the County, we then move to an ADA [(Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213)] analysis: is the employee disabled as defined for purposes of the ADA, and is there a means of reasonably accommodating continued absences? It sounds as though Tim may be seeking such an ADA accommodation now rather than avail himself of the intermediate step of discretionary leave of up to 89 days. Is that correct? In that case we would be seeking input from Tim on the nature and extent of the accommodation that he seeks, and then making an appropriate determination on that request. We have no desire to be contentious in our communication with Tim and look forward to working with him through you to satisfactory resolution of the question of appropriate leave status and accompanying documentation.

Four days later, on September 26, Merriman resigned.

While Merriman may have subjectively perceived the September 22 e-mail to be abusive, it is not objectively so. Rather, the e-mail demonstrates the County's desire to accommodate Merriman's disability by providing the leave that he needed. We decline to characterize the County's attempt to sort out Merriman's long-term leave situation as an unlawful employment practice. Furthermore, the County twice offered for Merriman to withdraw his resignation, offering a number of leave options. The County's e-mail is

not part of the same series of acts giving rise to the allegedly hostile work environment with Hoestine and Johnston. In Adams v. Able Bldg. Supply, Inc., an employer's frequent vocal and physical outbursts were sufficient to create a question of fact as to whether there was a gender-based hostile work environment. 114 Wn. App. 291, 295-97, 57 P.3d 280 (2002). No such hostile act occurred during the limitations period here. The trial court did not err in dismissing Merriman's hostile work environment claim, because it is time barred under the Antonius rule.

II. Constructive Discharge

Merriman argues that the trial court erred in dismissing his constructive discharge claim on summary judgment. To establish constructive discharge, an employee must show: (1) a deliberate act by the employer that made working conditions so intolerable that a reasonable person in the employee's shoes would have felt compelled to resign; and (2) that he or she resigned because of the conditions and not for some other reason. Washington v. Boeing Co., 105 Wn. App. 1, 15, 19 P.3d 1041 (2000). The first requirement can be shown by aggravated circumstances or a continuous pattern of discriminatory treatment. Id. at 16. An employee's frustration is not enough to show intolerable conditions. Crownover v. Dept. of Transp., 165 Wn. App. 131, 149, 265 P.3d 971 (2011), review denied, 173 Wn.2d 1030, 274 P.3d 374 (2012). A resignation is presumed to be voluntary and the employee must introduce evidence to rebut that presumption. Washington, 105 Wn. App. at 16. A resignation will still be voluntary when an employee resigns because he or she is dissatisfied with the working conditions. Crownover, 165 Wn. App. at 149.

Merriman argues that he resigned because of the intolerable conditions resulting from the County's refusal to accommodate his disability and from being forced to work with Holestine and Johnston. He also maintains that his psychiatric deterioration was exacerbated by HR's insistence that he provide medical information to support his unpaid leave. These purported reasons for his resignation are not supported by the record.

Merriman explained in a deposition that "I resigned from Whatcom County 'cause I didn't want to get fired." Merriman believed that he would be fired when his paid leave status expired. He claimed that "[e]verything up to this point had led me to believe that I was AWOL [(absent without leave)] starting on September 22nd." This belief was based on his previous work experience and a dated employee handbook provision, which stated that "failure to return to work on or before the end of the leave period, which is 89 days, will result in termination of employment."

However, Merriman admitted that the County never told him or indicated that he would be fired if he failed to return to work by a certain date. In fact, the County's correspondence with Merriman suggests just the opposite. For instance, Keeley's September 22 e-mail stated: "We have no desire to be contentious in our communication with Tim and look forward to working with him through [his attorney] to satisfactory resolution of the question of appropriate leave status and accompanying documentation." This clearly indicates the County's intent to retain Merriman as an employee and work with him to resolve his unpaid leave status. Moreover, the County twice offered for Merriman to withdraw his resignation and resume employment. In that

correspondence, the County suggested several possible leave solutions that could accommodate his disability.

As a result, Merriman's constructive discharge claim fails for several reasons. First, the purported intolerable conditions were not the true reason for his resignation. Second, a reasonable person would not have felt compelled to resign under the circumstances. The County never indicated to Merriman that he needed to return to work by a certain date or risk termination. Merriman voluntarily resigned, because of his subjective belief that termination was imminent. Moreover, it was the County's standard practice to require medical documentation to justify unpaid leave, and cannot be characterized as discriminatory. Merriman's frustration at having to provide such documentation does not create intolerable conditions. Merriman failed to raise a genuine issue of material fact on either of the prima facie elements required to establish constructive discharge, so the trial court did not err in dismissing the claim.

III. Failure to Accommodate

Merriman argues that the trial court erred by dismissing on summary judgment his claim that Whatcom County failed to accommodate his disability. The WLAD requires employers to reasonably accommodate a disabled employee unless the accommodation would be an undue hardship. RCW 49.60.180(2); Frisino, 160 Wn. App. at 777. The employee must establish four elements to prove discrimination based on lack of accommodation: (1) the employee had a sensory, mental, or physical disability that substantially limited his or her ability to perform the job; (2) the employee was qualified to perform the essential functions of the job in question; (3) the employee

gave the employer notice of the disability and its accompanying substantial limitations; and (4) upon notice, the employer failed to affirmatively adopt measures that were available to the employer and medically necessary to accommodate the disability. Davis v. Microsoft Corp., 149 Wn.2d 521, 532, 70 P.3d 126 (2003).

Whatcom County applies the Antonius rule to Merriman's failure to accommodate claim, arguing that the court can only consider events occurring between September 22 and 26, 2006. However, Antonius applies to hostile work environment claims, not failure to accommodate claims. Instead, the limitations period for a failure to accommodate claim accrues when the employer denies the request for accommodation and communicates that decision to the employee. Albright v. State, 65 Wn. App. 763, 767-68, 829 P.2d 1114 (1992). In other words, the proper focus is on the time of the discriminatory act, not the point at which the consequences of the act became most painful. Id. at 767. Antonius recognized this distinction. 153 Wn.2d at 264. A hostile work environment consists of repeated conduct, whereas discriminatory acts like termination or failure to promote are discrete. Id. For discrete acts, the limitations period runs from the act itself. Id. If the limitations period has run, a discrete act is not actionable even if it relates to acts alleged in a timely filed complaint. Id. Accordingly, failure to accommodate is a discrete act that occurs when the employer denies accommodation.

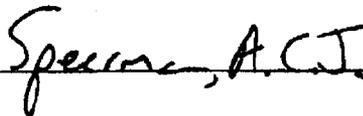
Under this limitations period, Merriman's failure to accommodate claim clearly fails. Merriman originally requested accommodation in April 2004. That request was initially granted and Merriman was allowed to lock his office door and close the blinds.

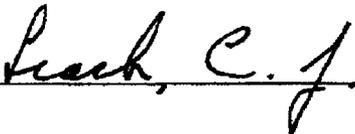
The County withdrew the accommodation in May 2005. On January 31, 2006, HR received Merriman's request that the accommodation be reinstated. This request was denied and communicated to Merriman on February 10, 2006. At the latest, then, the statute of limitations on Merriman's failure to accommodate claim accrued on February 10, 2006, when his request for accommodation was officially denied and communicated to him. Merriman did not file his complaint until September 22, 2009—well outside of the three year statutory limitations period. Because Merriman's failure to accommodate claim is time barred, the trial court did not err in dismissing it on summary judgment.²

We affirm.



WE CONCUR:





² Merriman also argues that County failed to accommodate him by not allowing him to take unpaid leave without providing further medical information. He fails to articulate why his disability limited him from providing further medical information and why such an accommodation was medically necessary for his disability.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

TIMOTHY P. MERRIMAN,
Appellant,

v.

WHATCOM COUNTY,
Respondent.

No. 69295-0-1

ORDER DENYING MOTION
FOR RECONSIDERATION

The appellant, Timothy Merriman, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied;

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

DATED this 22nd day of October, 2013.


Judge

2013 OCT 22 AM 9:02
STATE OF WASHINGTON
COURT OF APPEALS

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2005-441

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:	
Originator: Wendy Wefer-Clinton	<i>WWC</i>	11/24/05	RECEIVED NOV 15 2005 WHATCOM COUNTY COUNCIL	11/22/05	COTW/Executive	
Division Head: Karen Sterling Coons						
Dept. Head: Deputy G. Desler						
Prosecutor: Daniel L. Gibson	<i>DG</i>	11/14/05				
Purchasing/Budget:	<i>PJD</i>	11/14/05				
Executive: Fate Kremen	<i>FK</i>	11-15-05				
SUBJECT:						
2006 Unrepresented Resolution						
ATTACHMENTS:						
None						
SEPA review required? () Yes (<input checked="" type="checkbox"/>) NO SEPA review completed? () Yes (<input checked="" type="checkbox"/>) NO			Should Clerk schedule a hearing? () Yes (<input checked="" type="checkbox"/>) NO Requested Date:			
SUMMARY STATEMENT:				Distribution Request		
Proposed amendments for 2006 Unrepresented Resolution.				Indicate those who should receive a copy after Council action. List specific names to the right.		
				AS Facilities Management		
				AS Finance		
				AS Human Resources		
				AS Info Services		
				Assessor		
				Auditor		
				Cooperative Extension		
				District Court		
				Executive		
				Health		
				Hearing Examiner		
				Jail		
				Juvenile		
				Parks		
Planning						
Prosecutor						
Public Works						
Sheriff						
Superior Court						
Treasurer						
Other						
COUNCIL ACTION TAKEN:				Ordinance or Resolution Number		
11/22/2005: Approved 7-0, Res. #2005-067				(this item): Res. #2005-067		
Related County Contract #:						
Related File Numbers:						

PROPOSED BY: Executive

INTRODUCTION DATE: November 22, 2005

RESOLUTION NO. 2005-067

**A RESOLUTION IN THE MATTER OF ADOPTING A SALARY SCHEDULE AND
POLICIES FOR UNREPRESENTED WHATCOM COUNTY EMPLOYEES FOR THE
YEAR 2006**

WHEREAS, it is necessary to establish policies and salaries for the unrepresented employees; and,

WHEREAS, the Whatcom County Council hereby adopts the following policies for administration of personnel issues affecting unrepresented employees; and,

WHEREAS, it is nonetheless understood that state law may override certain stipulations set forth herein; and,

WHEREAS, the Whatcom County Council hereby adopts the concept of a salary matrix as the basis of establishing salaries for a majority of the non-represented positions;

NOW, THEREFORE, BE IT RESOLVED, that the Council intends that the Administration should follow the policies set forth below and should place non-represented employees within the proper range and step according to the FTEs contained in the adopted budget;

AND FURTHER, THEREFORE, BE IT RESOLVED,

1. DEFINITIONS

1.1 "**Unrepresented employee**" is defined as either elected officials or non-represented employees.

1.2 "**Elected official**" is defined as only those officials elected pursuant to the provisions of the Whatcom County Charter and Washington State Law (except Superior Court Judges).

1.3 "**Non-represented employee**" is defined as all other unrepresented employees who are appointed to a budgeted full-time equivalent position.

1.4 "**Full-time equivalent**" and "**FTE**" are both defined as the currently assigned percentage, not to exceed currently budgeted full-time equivalency of a position, as authorized by budget ordinance.

2. NON-REPRESENTED SALARY MATRIX

The monthly salaries of non-represented positions shall be established within the ranges and steps provided in Exhibit A effective January 1, 2006 which provides for approximately a two percent (2%) general increase over the amended January 1, 2005 matrix. Monthly salary amounts indicated are for one (1.00) FTE. These amounts will be pro-rated for fractional FTEs and may be converted to an hourly rate for FLSA non-exempt positions by dividing the monthly amount by 173.33.

2.1 Exhibit A – Non-Represented Salary Matrix.

For ranges 100 through 220, step "I" will be increased one percent (1.0%).

For ranges 230 through 410, a new step "J" will be added which will be two percent (2.0%) higher than step "I".

2.2 Exhibits B and C – Binding Arbitration Adjustment Salary Matrices.

Movement from range 320SBA and 700CBA, step D, is 3.8% between steps up and down and 5% between ranges.

3. OTHER NON-REPRESENTED POSITIONS

Those non-represented positions not on an established matrix shall be paid a monthly salary, pro-rated for fractional FTEs, effective January 1, 2006 unless otherwise noted.

3.1 Court Commissioners.

Court Commissioners are to be paid at a rate equivalent to a percentage of the comparable state Court Judge salary level. Any changes in these Judges' salaries during 2005 will be reflected in the comparable Court Commissioners' salaries.

	% of Comp. Judge
Superior Court Commissioner	85%
District Court Commissioner	80%

3.2 Other Positions not on a Salary Matrix.

Court Reporter	\$4,752
Health Officer	\$9,118

4. COMPENSATION & EMPLOYMENT

4.1 Step Movement. Within the salary matrices contained in Exhibit A, B and C, all steps shall be awarded on the basis of successful job performance. Non-represented employees shall advance to the next step twelve (12) months after their previous movement, on the first day of the appropriate month, if the overall performance evaluation is "meets job requirements" or better.

4.2 Reclassification or Promotion. In compliance with County policy on reclassifications (AD140000Z), individuals who are reclassified (because of the addition of significantly higher-level duties), per written approval of the Executive's Office, or promoted into a higher position shall move to the step in the new range that provides at least a 5% increase in base salary, not to exceed the top step of the new range. The reclassification or promotion date becomes the step date.

4.3 Realignment. Department heads can request for consideration during the budget process, realignment of positions the following January, which are paid at least five percent (5%) below the average of at least four (4) of the six (6) comparable counties (all comparable counties where matches exist must be used). Individuals moving to a new range because of a realignment of non-represented positions or ranges shall be placed in their current step (but no higher than the top step) in their new range. The effective date of the realignment shall become the step increase date.

4.3.1 Additional Considerations. In the administration of section 4.3 – Realignment, in the event the County identifies a position as one with documented local recruitment and/or retention difficulties then secondary comparables based on close geographical location and sociological issues may be considered.

4.4 Position Movement. Individuals moving to a position in a lower range may have a salary adjustment up or down depending upon individual qualifications for the position, the nature of the work performed, and internal equity with no change to the next step increase date.

4.5 Overtime & Compensatory Time Pay. The provisions for overtime payments and compensatory time (for working over 40 hours in a week) apply only to non-represented employees who are covered as non-exempt by the Federal Fair Labor Standards Act (FLSA). Employees requesting compensatory time in lieu of overtime pay shall have such request granted up to a maximum of twenty-four (24) hours per calendar year. Additional compensatory time may be mutually agreed to, but an employee may accrue no more than a maximum of 80 hours of compensatory time at any time. By mutual agreement, and per written approval of the department head, an employee may cash out accrued compensatory time at the end of each calendar year.

In recognition of the contributions non-represented employees sometimes make in working far beyond the hours required in a regular work week, and the fact that FLSA-exempt employees do not get overtime or compensatory time, the Executive's Office has authority to award deserving non-represented FLSA exempt employees up to five (5) days of paid administrative leave per year. These days must be used in the year awarded unless County business prevents this occurring, in which case they can be carried over one year. Administrative leave may only be cashed out upon separation.

The Executive is empowered to authorize extra pay for non-represented employees during a period of extraordinary circumstances (such as emergency conditions, a strike, etc.).

4.6 Interim Assignment Pay. From time to time, non-represented employees may be asked to cover all or part of the duties of a higher-level position during periods of extended absence, vacancy, or for special assignments. In these instances, interim

assignment pay may be awarded. Department heads shall discuss appropriate rate of interim assignment pay with Human Resources.

4.7 Employment Opportunities. Non-represented employees who wish to apply for a union position may do so by the posted closing date for union members. Non-represented applications will be reviewed only if there are no current eligible and qualified represented employees who apply or who are selected for the opening. The County, at its sole discretion, may or may not select non-represented employees for any type of opening, or may proceed with a public posting and include the non-represented employees in the employment process.

4.7.1 Provisional Appointments. The County may make provisional appointments for employees not fully meeting all requirements and qualifications. Such employees will be placed in a range lower than the posted position and will not receive a promotional increase upon fully meeting posted requirements, but will maintain their step increase date when moved to the range of the posted position.

4.8 Disciplinary Suspensions. FLSA-exempt employees are not subject to unpaid disciplinary suspensions except in increments of full work-weeks, unless the infraction leading to the suspension is for a violation of a safety rule of major significance.

4.9 Employment at Will. Employment for non-represented employees is at will, which means either the employee or the County can end the employment relationship without being legally required to give notice or a reason except as stipulated herein or by County policy.

4.10 Emergency Response. Non-represented employees authorized in advance and required to respond in person to extraordinary emergencies between the hours of 9:00 p.m. and 6:00 a.m., Monday through Friday and any time on Saturday or Sunday, shall receive a \$50 stipend per incident. If response to an incident is during normal hours but extends to hours or days noted above, no stipend is awarded. If the incident extends beyond 24 hours from the first response by employee and additional responses are required during times or days noted above, an additional stipend will be awarded. Pre-authorization is provided by an employee's supervisor with final written approval of the department head for a specific incident requested after the incident. In the case of department heads, pre-authorization and final written approval of a specific incident is provided by the Executive or designee.

4.11 Recognition and Retention Premium. Beginning with the non-represented employee's fifth (5th) year of employment, employees who are .5 FTE or above shall receive five dollars (\$5.00) per month times each year of service (\$25.00) in addition to their regular pay as a recognition and retention premium. Thereafter, on January 1st of each year, they shall receive five dollars (\$5.00) per month times each year of service to a maximum of twenty-five (25) years – one hundred and twenty-five dollars (\$125.00) per month. Employees must have had a performance evaluation within the last year with an overall rating of "3.38" or better to receive and maintain the premium. Employees receiving an overall rating of less than "3.38" shall not receive the premium. Prior regular County employment with verifiable performance at or above the required level may be considered when determining years of service.

4.12 Probable Cause Compensation. Any attorney in the Prosecuting Attorney's Office required to appear on a Saturday or Sunday at a scheduled Probable Cause hearing shall receive \$175 for his/her appearance.

4.13 Nomination for Merit Step.

4.13.1 Merit Step. Non-represented employees who are not at the top step of their assigned range may be nominated by the department head to the Executive's Office for a one-step adjustment in recognition of documented exemplary performance. A step adjustment for merit does not impact the step date.

4.13.2 Documentation. Documented exemplary performance for a merit step shall include a performance evaluation within the last year with an overall rating of at least "4.00" with no individual elements or sub-elements at or below the "needs improvement" level. Additional documentation must be in writing and shall include specific information as to the employee's contribution:

- to achievement of some element or elements of the strategic plan;
- that has organization- or community-wide impact;
- to the completion of a specific, significant department project; or
- to a similar type of accomplishment.

4.13.3 Timing. Nomination requests will normally be submitted during the budget process, but may be submitted any time during the year if funding is available within the current budget for the department.

4.14 Binding Arbitration Adjustment. In recognition of the fact that two bargaining units within the Sheriff's Office have access to binding interest arbitration, unrepresented employees in the Sheriff's Office shall receive or be eligible for, on approximately the same basis as employees directly reporting to them, the following items:

- Pay increases, including retroactivity (non-represented employees only).
- The same basis for calculating Recognition and Retention Premium (Longevity). Parameters in section 4.11 of the Unrepresented Resolution must be met in order to be eligible for the Premium (non-represented employees only).
- The same annual clothing allowance if they must maintain a dress uniform.
- Medical coverage.

5. SCHEDULING

5.1 Work Schedule. The hours of operation may vary between departments and divisions in order to better serve the public.

5.2 Flexible Schedule and Flex Time. Flexible scheduling allows the hours and the basic workday or workweek of an employee to be modified from the department standard to attend to County business or to accommodate a different schedule. Periodic flex time may be used for personal employee business, to make up doctor, vision or dental appointments or to accommodate meetings. Approval of flexible scheduling or flex time shall not allow for greater than forty (40) hours of compensation

in any one work week, shall provide for no reduction in service to the public, and must not increase the County's compensation costs. Both flexible scheduling and flex time require the mutual agreement of the employee and the department head. Flexible scheduling also requires the approval of the Executive's Office.

6. LEAVES

6.1 Sick Leave. For the purpose of sick leave benefits, sick leave shall accrue to each non-represented employee from their date of hire in the amount of eight (8) hours for each month of employment, if benefits eligibility criteria is met, to a maximum of nine hundred and sixty (960) hours.

6.1.1 Additional Accrual. A non-LEOFF II employee who has accrued nine hundred and sixty (960) hours as of December 31 of any year shall be allowed to accrue up to one thousand and fifty-six (1,056) hours (960 hours + up to 96 hours annual accrual) of sick leave during the year immediately subsequent. These additional hours of accrual may not be cashed out. The employee's total accrual reverts back to no more than nine hundred and sixty (960) hours at the end of the year.

6.1.2 Sick Leave Usage. Employees may request sick leave as accrued and it may be used in increments of less than one scheduled workday, but not less than one hour for FLSA exempt employees.

6.1.3 Proof of Illness. Upon request, an employee shall provide the County with proof of incapacitating illness.

6.1.4 Retirement Health Savings Plan. Employees who have at least 960 hours in a sick leave bank at beginning and end of a calendar year (or at the beginning of a calendar year and upon termination in that same year) are eligible to receive a County-paid Retirement Health Savings (RHS) plan contribution, based upon a portion of the hours accrued but not used during the year if they are enrolled in the plan. Sick leave hours accrued to a maximum of forty-eight (48) hours may be eligible for partial contribution to a Retirement Health Savings Plan if less than forty-eight (48) hours of sick leave are used that year. Calculation is based on 25% of eligible hours.

6.1.5 Sick Leave for Family Care. Sick leave can be used to care for the child of an employee with a health condition that requires treatment or supervision, or for the care of an employee's spouse, registered spousal equivalent (up to forty (40) hours per year), parent, parent-in-law or grandparent with a serious health condition or an emergency condition. Spousal equivalents must be registered with AS-Human Resources prior to requesting sick leave usage.

6.1.6 Sick Leave Cashout. A non-represented employee with three (3) or more years of current, continuous employment with the County shall be entitled to sick leave cashout upon voluntary separation or layoff in the amount of twenty five (25%) percent, or fifty (50%) percent if hired before May 15, 1984. Employees must give at least two (2) weeks' notice prior to separation to be eligible for sick leave cashout.

6.1.7 Sick Leave Sharing. Sick leave sharing is available to non-represented employees per the County's Sick Leave Sharing Program with a yearly donation maximum of twenty-four (24) hours.

6.1.8 LEOFF II Accrual Maximum. LEOFF II non-represented employees may accrue sick leave up to a maximum of one thousand, four hundred and forty (1,440) hours. No more than nine hundred and sixty (960) hours shall be used as a base for calculating sick leave cashout. If any hours are used per section 6.4 for partial contribution to a Retirement Health Savings Plan, any hours used in that calculation will no longer be available to the employee and will be deducted from the accrual bank.

6.1.9 Sheriff's Office. Non-represented employees in the Sheriff's Office (including Emergency Management and the Jail) who have employees directly reporting to them who receive an additional five (5) days of vacation if they have seventy-five (75) days of sick leave on December 31 of any year shall receive the same consideration. The additional five (5) days of vacation are to be used in the following calendar year.

6.1.10 Part-Time Employees' Sick Leave Accrual Rate. Part-time employees' sick leave accrual rate will be pro-rated per FTE.

6.2 Vacation. Non-represented employees (except court reporters and superior court commissioners) shall be entitled to vacation accrual benefits if benefits eligibility criteria is met. Accruals will be in accordance with the following schedule with the first employment year being the year hired and subsequent employment years being the first of the year. Prior regular County employment may be considered when determining employment year.

During 1st through 4th employment year	accrue 10.00 hours per month
During 5th through 9th employment year	accrue 13.34 hours per month
During 10th and subsequent years	accrue 16.67 hours per month

Vacation leave may be requested as accrued and approved and may be used in increments of less than one scheduled workday, but not less than one hour for FLSA exempt employees. No more than two hundred and forty (240) vacation hours may be carried forward from one year to the next, unless extraordinary circumstances exist and prior approval from the Executive's Office is obtained. Unused vacation in excess of two hundred and forty (240) hours on December 31 shall be forfeited. The express purpose of vacation leave is to allow employees to take time away from work to relax, recreate and otherwise attend to personal matters. It is the policy of Whatcom County that non-represented employees shall take the regular vacation time allocated each year for the good of the County and the employee. Under extraordinary circumstances and by mutual written agreement between the non-represented employee, the department head and the Executive's Office, up to eighty (80) hours of vacation can be cashed out each calendar year.

6.2.1 Part-Time Employees' Vacation Accrual Rate. Part-time employees' vacation accrual rate will be pro-rated per FTE. FLSA non-exempt employees will receive extra vacation pay, on a quarterly basis, based on extra hours worked above the assigned FTE (not to exceed equivalent of 1.00 FTE).

6.2.2 Compassionate Leave. Employees may donate accrued vacation leave to employees for the serious health condition (as defined by FMLA) of the employee per County policy.

6.3 Holidays. Paid holidays will be available as posted on an annual basis for non-represented employees (except district and superior court commissioners) who are in paid status, or on approved voluntary unpaid furlough, the scheduled work day before and after the holiday.

6.3.1 Personal Holiday. Each non-represented employee (except court reporters and district and superior court commissioners) shall receive one (1) Personal Holiday each calendar year equivalent to their FTE on January 1, not to exceed eight (8) hours. The Personal Holiday must be used in the year it is earned, in increments of at least one hour for FLSA exempt employees, unless prior to the end of that year, written approval to carry it over is obtained from the department head and the Executive's Office. Personal Holidays are not cashed out upon separation.

6.3.2 Working a Holiday. Employees who are required to work, because state law requires an office to remain open on the December 24th County holiday observance, shall receive two days off with pay.

Employees who are required by their department head to work a paid County holiday because of an emergency, a project that can only be completed when County offices are closed, or special directive from the Executive's Office, shall receive two (2) days off with pay at a mutually agreeable time.

6.3.3 Part-Time Employees' Holiday Pay. Part-time employees will receive holiday pay based on their FTE. FLSA non-exempt employees will receive extra holiday pay, on a quarterly basis, based on extra hours worked above the assigned FTE (not to exceed equivalent of 1.00 FTE).

6.4 Jury Duty & Military Leave. Non-represented employees considered exempt under the Federal Fair Labor Standards Act (FLSA) shall have no deduction in salary for absences caused by jury duty or annual military leave. Jury duty and military leave will be provided as described in Personnel Policies and Procedures or per current laws.

6.5 Bereavement Leave. Bereavement leave shall be provided to non-represented employees, who suffer a death in the immediate family, of up to five (5) days (maximum of forty hours) off without loss in pay. Immediate family members include a spouse or registered spousal equivalent, child or parent (including step) of either the employee or the employee's spouse. Spousal equivalents must be registered with AS-Human Resources prior to requesting bereavement leave. Up to three (3) days off without loss of pay is available for other close family members (including step): brother, sister, grandchildren or grandparents of either the employee or the employee's spouse. In the event of a funeral or other memorial occurring as a result of the death of a current, lawful brother or sister-in-law, the affected employee may have up to eight (8) hours of paid time off to attend the funeral or memorial, if not covered above. Additional days off without pay or using accrued leave may also be available upon written approval of the

department head. Requests for greater than five (5) days of any type of leave without pay in a calendar year requires Executive Office approval.

6.6 Civil Leave. Civil leave with pay shall be allowed to permit a non-represented employee to testify in any federal, state or municipal court when a subpoena compels such testimony and such testimony is on behalf of Whatcom County or is in connection with a matter in which Whatcom County is a party.

6.7 Family Leave. The County provides unpaid leave to any eligible non-represented employee covered by this Agreement, consistent with the Washington State Family Leave Act, Washington State Family Care Act and the Federal Family and Medical Leave Act (FMLA). Employees are not required to use accrued vacation time or sick leave time before commencing unpaid family leave, except an employee who has previously used twelve (12) weeks of unpaid FMLA will, for the following four years, use all allowable accrued vacation, sick and personal holiday time before beginning unpaid leave during any subsequent twelve-month FMLA period. Unpaid leave used prior to January 1, 2006, will not count towards the 12-week unpaid limit. If leave pursuant to FMLA stipulations would also qualify as leave under any other County benefit, policy or type of leave, the period of the FMLA leave will run concurrently and will apply toward an employee's entitlement for each type of leave that may be applicable.

6.8 Maternity Leave. Accrued sick leave may be utilized for maternity/disability leave. In the event sick leave is exhausted before the employee returns to work, any vacation or other paid leave which has accrued must be utilized before approval of any leave without pay is considered by the County, except for leaves falling under the federal Family and Medical Leave Act or County policy. If leave pursuant to this provision would also qualify as leave under any federal or state statutes, the period of leave will apply toward the employee's entitlement to leave under any applicable statute consistent with section 6.7. Unless the birth mother chooses to invoke FMLA, a birth mother's period of temporary pregnancy-related disability shall not be deducted from the FMLA leave entitlement.

6.9 Leave for Illness or Injury. Non-represented employees may request leave for major illness or injury utilizing Family/Medical Leave, accrued leaves, and unpaid leaves, as appropriate. Total time for the leave, which will include all time away from work, may be extended up to a maximum of twelve (12) months with the mutual consent of the department head and the Executive's Office. An employee who returns to work will be credited for length of return time within the twelve (12) month limit if the employee must go back on disability for the same illness/injury.

6.10 Absence Due to Adverse Weather. FLSA non-exempt employee's absence due to severe inclement weather or other unusual emergency conditions will be charged to one of the following in sequential order: compensatory time, vacation leave, personal holiday, leave without pay, unless an employee who wishes to take leave without pay notifies his/her payroll preparer before the department's payroll cut-off time.

7. ELECTED OFFICIALS

7.1 Wage Adjustments for Elected Officials. Elected Officials, except Council Members, shall receive the same overall wage adjustment to their 2005 salary (per Resolution #2005 - 066) as granted non-represented employees for 2006. Council Members shall be compensated per Resolution 2005-020.

7.1.2 Realignment. During the first quarter of each year, Elected Officials salaries, except Council Members and the County Executive, shall be compared to positions in comparable counties per relevant parts of the realignment process described in Section 4.3. If the stated parameters are met, impacted Elected Officials would receive an increase not to exceed 4.3%, effective retroactively to January 1. Positions which meet realignment criteria are adjusted, with the County Executive always remaining at 101% of the Prosecuting Attorney.

7.2 District Court Judges. District Court Judges shall accrue sick leave at the same rate as non-represented employees. Additionally, pursuant to RCW 3.34.130, District Court Judges will receive thirty (30) days' annual leave each January 1. Annual leave cannot be carried forward to the next year. When a District Court Judge vacates office, the total remuneration for annual leave and sick leave shall be granted as allowed by RCW 3.34.100, and shall not exceed the equivalent of thirty (30) days' monetary compensation.

8. BENEFITS

8.1 Benefits Eligibility. Non-represented employees must be compensated at least eighty (80) hours per calendar month and be in at least a .5 FTE position to be eligible for benefits (including, but not limited to, sick leave, vacation, and health and welfare). Compensation is defined as payment of wages for work performed, vacation, accrued sick leave, or other paid leave. County payment of health and welfare premiums for benefits of non-represented employees are made on behalf of employees. Compensation earned in one (1) calendar month provides health and welfare benefit coverage in the following month unless stipulated otherwise in plan documents. Any elected official or newly hired non-represented employee will be initially eligible for health and welfare benefits the calendar month following at least 80 hours of compensation in one (1) calendar month. Waiting period requirements on individual plans must be met for benefit reimbursement. For elected officials, hours of compensation would be determined based on budgeted FTE with 173.33 standard hours in a month. Income resulting from an industrial injury to a maximum of twelve (12) months from the date of injury shall also be credited as compensation.

8.1.1 Benefits Coverage In Case of Documented Extended Illness or Injury.

If an employee has a documented extended illness or injury and is unable to work or be compensated at least eighty (80) hours per calendar month, medical premiums will continue to be paid by the County for full employee and family coverage for up to twelve (12) months from the date the employee is first absent on account of such illness or injury unless employment is terminated. This waiver period is deducted from COBRA eligibility. Dental and vision premiums will be paid by the County for the first three months only.

8.1.2 Benefits Coverage for Rehired Employees. Employees who were in an FTE position and are rehired by the County into an FTE position within one year of separation from employment will be eligible for benefits if the employee met the Unrepresented Resolution and plan eligibility requirements and was enrolled in County provided health & welfare plans prior to leaving County employment. Coverage will begin the first of the month following the meeting of benefits eligibility requirements of each individual benefit plan.

8.1.3 Part-Time Employee's Benefits Coverage. Part-time employees who fail to receive 80 hours of compensation in a calendar month shall be considered eligible for all applicable benefits during the month in question when the failure to meet eligibility requirements is due to a quirk in scheduling and through no fault of the employee.

8.2 Health & Welfare Benefits. All elected officials and eligible non-represented employees shall be granted the following health and welfare benefits, and the benefits shall include full premium contribution for the employee, spouse, and dependent children of the employee, except as noted below.

- A) Medical, prescription and hospital benefits
- B) Dental coverage
- C) Vision care
- D) Life insurance in the face amount of each elected official or non-represented employee's annual salary to a maximum of \$50,000. (Under the County's current life insurance carrier, employees may be eligible to purchase additional employee, as well as spouse and dependent coverage via payroll deduction.)

8.2.1 Contribution Cap. For 2006, the County will contribute for each employee, up to \$665 per month for medical coverage under the Cap Plan.

8.2.2 LEOFF I Medical Coverage. LEOFF I unrepresented employees will not need to make individual co-payment for themselves and when they incur \$3,000 in personal medical expenses during the year, he or she is entitled to a credit of \$600 against the family stop loss.

8.2.3 Sheriff's Office Disability Plan. LEOFF II and PERS unrepresented employees in the Sheriff's Office will be provided the same or substantially equivalent disability plan as provided to employees directly reporting to them.

8.3 Other Benefits

8.3.1 Flex 125. The County will pay set-up costs and ongoing maintenance costs to allow employees to utilize a Dependent & Health Care Reimbursement Plan.

8.3.2 Retirement Plans. The County provides payment to retirement plans through the Washington State Department of Retirement Systems (DRS), which also requires contributions from eligible non-represented employees. Elected officials may elect, but are not required, to participate in a DRS plan.

8.3.3 Deferred Compensation. The County provides the opportunity for voluntary employee participation in deferred compensation (457 plans) and 401(a) programs. The County matches these contributions fifty cents on the dollar, up to a maximum of 2% of base salary, with County contributions placed in a 401(a) Plan. New employees, within thirty (30) days of hire, may elect to contribute directly to the 401(a) plan.

8.3.4 Employee Assistance Program. The County provides confidential counseling assessment services through an Employee Assistance Program for employees and their immediate families.

8.3.5 Disability Plan. The County provides administrative oversight for an employee-paid disability plan. Minimum participation requirements for offering the plan must be met and employee payment will be via payroll deduction. Participation in the plan will be voluntary unless participation drops below 60%. If participation drops below 60%, participation in the plan will be mandatory for new hires. Employees covered under the Sheriff's Office disability plan are not eligible for this employee-paid disability plan. If an employee does not enroll within thirty (30) days of hire, a physical examination may be required to determine eligibility for the plan.

8.3.6 Retirement Health Savings. The County provides a tax-free retirement health savings plan for medical expenses into which unrepresented employees can make voluntary contributions per plan documents. Open enrollment is October 1 – November 29 each year for participation the following year. New employees may enroll within thirty (30) days of hire.

8.3.7 Clothing Repair & Replacement. Employees who, in the course of pursuing their assignments, suffer a loss or substantial damage to clothing, excluding normal wear and tear, shall be reimbursed the reasonable cost for the repair or replacement of like items at a rate commensurate with the condition of the claimed item. Personal property shall be repaired or replaced up to \$35.00 per item.

8.3.8 Electronic Funds Transfer. All newly hired regular employees shall authorize paycheck deposit by electronic funds transfer (EFT) within thirty (30) days of employment. Employees may temporarily stop EFT in emergency situations with at least seven (7) days notice before a scheduled payday, but must restart EFT within three months.

9. POLICY OR PROVIDER CHANGES

From time to time, the County may change provisions in this resolution or select different providers of benefits, which may impact plans offered. Nothing in this document shall limit the County's ability to change any provision in this resolution or to search for the most cost effective benefit packages, nor shall it commit the County to selecting any specific provider or plan.

10. EFFECTIVE DATE

All changes in salaries and benefits under this resolution shall become effective on January 1, 2006, except where noted otherwise and except that any further changes during 2006 may be retroactively applied as approved by the County Council.

AND FURTHER, THEREFORE, BE IT RESOLVED, that Resolution No. 2005-066 is hereby rescinded effective January 1, 2006, and this Resolution shall become effective that same date.

APPROVED this 22nd day of November, 2005



ATTEST
COUNTY COUNCIL
OF WHATCOM
COUNTY
STATE OF
PENNSYLVANIA

Dana Brown-Davis
Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Laurie Caskey-Schreiber
Laurie Caskey-Schreiber, Chair

APPROVED as to form:

Daniel L. Gibson
Assistant Chief Civil Deputy Prosecuting Attorney

Exhibit "A"
2006 Non-Represented Salary Matrix – effective January 1, 2006

Range	Step A	Step B	Step C	Step D	Step E	Step F	Step G	Step H	Step I	Step J
100	1730	1798	1870	1943	2017	2093	2173	2255	2300	
110	1803	1875	1949	2027	2104	2184	2266	2352	2399	
120	1881	1955	2033	2113	2194	2278	2364	2454	2503	
130	1962	2040	2121	2204	2288	2375	2464	2558	2609	
140	2047	2128	2211	2299	2387	2478	2571	2669	2722	
150	2135	2220	2307	2398	2489	2584	2682	2784	2840	
160	2227	2314	2406	2501	2596	2695	2797	2903	2961	
170	2323	2414	2509	2608	2707	2810	2917	3028	3089	
180	2421	2517	2617	2720	2823	2930	3042	3157	3220	
190	2526	2625	2730	2838	2946	3058	3174	3295	3361	
200	2636	2740	2848	2960	3072	3189	3310	3435	3504	
210	2749	2857	2970	3088	3205	3326	3453	3584	3656	
220	2867	2980	3098	3220	3343	3470	3602	3738	3813	
230	2991	3109	3231	3359	3486	3619	3757	3899	4047	4128
240	3118	3242	3370	3504	3637	3776	3920	4069	4224	4308
250	3254	3382	3516	3655	3793	3937	4087	4242	4403	4491
260	3394	3527	3667	3812	3957	4107	4263	4425	4593	4685
270	3539	3679	3825	3976	4127	4284	4447	4617	4792	4888
280	3691	3837	3989	4147	4305	4469	4638	4814	4997	5097
290	3852	4004	4162	4326	4490	4660	4836	5021	5212	5316
300	4016	4175	4340	4511	4683	4860	5045	5237	5436	5545
310	4189	4354	4527	4705	4884	5069	5262	5462	5669	5782
320	4369	4541	4721	4907	5094	5288	5489	5697	5913	6031
330	4557	4737	4924	5118	5313	5515	5724	5942	6167	6290
340	4753	4941	5136	5339	5542	5752	5970	6197	6432	6561
350	4957	5153	5357	5568	5779	5999	6226	6463	6709	6843
360	5171	5375	5588	5808	6028	6258	6495	6742	6998	7138
370	5393	5606	5827	6058	6288	6527	6775	7032	7299	7445
380	5625	5848	6078	6318	6558	6806	7066	7334	7612	7764
390	5867	6099	6339	6589	6839	7099	7368	7649	7940	8099
400	6119	6361	6612	6873	7134	7405	7687	7978	8281	8447
410	6382	6634	6896	7169	7441	7723	8017	8322	8638	8811

Exhibit "B"

**2005 Binding Arbitration Adjustment Matrix only – effective January 1, 2005
(remains in place in 2006 until changed)**

Range	Step A	Step B	Step C	Step D	Step E	Step F	Step G	Step H
320SBA	4628	4811	5001	5199	5397	5602	5815	5902
330SBA	4860	5052	5252	5459	5666	5881	6104	6196
340SBA	5102	5304	5514	5732	5950	6176	6411	6507
350SBA	5358	5570	5790	6019	6248	6485	6731	6832
360SBA	5627	5849	6080	6320	6560	6809	7068	7174
370 SBA	5908	6141	6384	6636	6888	7150	7422	7533

2006 Binding Arbitration Adjustment Matrix only – effective January 1, 2006

Exhibit "C"

2006 Binding Arbitration Adjustment Matrix only

Range	Step A	Step B	Step C	Step D	Step E	Step F	Step G	Step H
700CBA	4631	4814	5004	5202	5400	5605	5818	6051
710CBA	4862	5054	5254	5462	5670	5885	6109	6353
720CBA	5105	5307	5517	5735	5953	6179	6414	6671
730CBA	5361	5573	5793	6022	6251	6489	6736	7005
740CBA	5630	5852	6083	6323	6563	6812	7071	7354

EMPLOYEE HANDBOOK



**WHATCOM
COUNTY**

EMPLOYEE HANDBOOK



**WHATCOM
COUNTY**

INTRODUCTION

Whatcom County is a Home Rule County. In 1978, the voters adopted a Home Rule Charter which, among other things, provides for a County Executive and a seven member County Council, thus separating the Executive and Legislative branches of government. The County Executive is the Chief Executive Officer of the County, and is an elected official. The other elected offices established by the Charter are the County Auditor, the Assessor, the Treasurer, the Sheriff, and the County Prosecutor. The Charter does not address the judicial system. The three Superior Court Judges and the two District Court Judges are elected under the provisions of state law.

The County Council consists of two members elected from each of three Council Districts plus one member elected from the County at large. The Council performs the legislative functions of the County, establishing ordinances, resolutions, and policies which the executive branch administers.

The Policies and Procedures and the Personnel Ordinance which are published in this document, apply only to County employees. Not every agency which receives money from the County is a County department. The following list covers those departments which are subject in whole or in part to these procedures.

County Executive	Parks and Recreation, and Senior
Agricultural Extension (clerical only)	Services
Archive and Law Library	Personnel
Assessor	Planning
Auditor	Public Defender
County Council	Public Works
Developmental Disabilities	Purchasing
District Court	Prosecuting Attorney
Misdemeanant Probation and Parole	Sheriff
Hearing Examiner	Jail
Juvenile Probation Services	Superior Court Clerk
Health Department	Superior Court
Combined Treatment Services	Treasurer

SALARY AND BENEFITS

The salary schedule for each position will be found as a part of the collective bargaining agreement for each bargaining unit. Salaries for employees not represented by a union are set each year by the County Council. All employees in Teamster's bargaining units except the Sheriff's Department and the Jail are on a single salary schedule. All non-union employees with the exception of the elected officials are on the same schedule. The schedule consists of twenty-eight Ranges consisting of an Entry step followed by fifteen semi-annual steps. Each higher step is 1.9% greater than the preceding step. Each higher Range is 4.3% greater than the preceding Range.

Probationary employees will normally be paid at the Entry Step. The employee moves to the next step of the pay plan in accordance with the terms of his/her collective bargaining agreement. Step raises for non-union employees are set by the Un-Represented Employee's Salary Resolution.

In addition to your salary, the County provides fringe benefits which amount to about a 39% addition to salary for the average employee. These benefits include vacation, holiday pay, sick leave, industrial insurance, retirement contribution, health and welfare premiums, social security contribution, and longevity pay.

The following table will assist you to know which health and welfare plan provides coverage for your department, since the package you receive depends upon your bargaining unit contract:

EMPLOYEE BENEFIT PLAN COVERAGE

Carrier	Park Dept	Public Works	Sheriff	Jail	Inside Contract	Juvenile	Non-Union
Whatcom Medical Bureau (includes Drug Plan)			X	X	X	X	X
Teamster's Medical	X	X					
Teamster's Drug Plan	X	X					
Teamster's Vision	X	X	X	X	X	X	X
Teamster's Dental	X	X	X	X	X	X	X
Safeco Life Insurance			X	X	X	X	X
Teamster's Life Ins.	X	X	X	X	X	X	

Ferry Crew

The collective bargaining agreement with the Inlandboatman's Union and the Masters, Mates and Pilots Union provides for a different system of health and welfare benefits. Payment are made by the County to the IBU National Health Benefit Trust on a bi-monthly basis. The Trust covers health and welfare benefits.

Nor-Bell Nursing Home

Nor-Bell Nursing Home is different from other County departments in that all of its funding comes from the Washington State Department of Social and Health Services or from private patients. It is not supported by County funds. Consequently, its benefit package differs from the other groups. Health benefits are provided through Whatcom Medical Bureau. Nor-Bell employees are represented by the Washington State Council of County and City Employees, AFL-CIO, AFSCME.

Retirement

Unless they are for some reason ineligible, all County employees contribute a percentage of their wage to one of the retirement systems managed by the State of Washington Department of Retirement Systems. Commissioned officers of the Sheriff's Department are members of the Law Enforcement officers and Firefighter's Pension Fund (LEOFF). All other employees belong to the Public Employee's Retirement System (PERS).

Employees who began government service in a city or county and who were enrolled in either PERS or LEOFF prior to October 1, 1977 are members of Plan I of those systems. Employees who first became employed by a city or county after October 1, 1977 are members of Plan II of that system. The pension benefits of the two plans differ as do the conditions for retirement.

Collective Bargaining Agreements

Unless you are an elected official or are exempt from union membership, you will become part of a collective bargaining unit and represented by one of the unions which represent Whatcom County employees, General Teamster's Local Union #231 represents all employees except those employed by the Ferry system or by Nor-Bell. Each of the collective bargaining agreements provides detailed provisions which outline the wages, hours and working conditions as well as the benefits to which you are entitled as a County employee who is in that bargaining unit.

Affirmative Action

Whatcom County is an Equal Opportunity Employer. It is committed to the establishment and maintenance of a Personnel System based upon the six merit principles outlined in Section 2 of the Personnel Ordinance. In implementing these standards, it is County policy to ensure that all persons have equal employment opportunity regardless of race, creed, color, sex, marital status, national origin, age, sensory or mental or physical handicap. The Personnel Ordinance, the Policies and Procedures, and the Affirmative Action Plan of the County were adopted in order to attract and retain efficient, effective and productive employees through the adoption of fair, equitable and reasonable procedures for handling personnel matters. The Personnel Ordinance and the Policies and Procedures Manual are part of this booklet. Copies of the Affirmative Action Plan are available from the Personnel Office upon request. A copy has also been forwarded to each department.

Resolving Complaints

Periodically, some problem will occur which the employee will wish to resolve. The first person to contact, is the immediate supervisor. There are a variety of ways to resolve problems, and all of them begin with the immediate supervisor. If the problem cannot be resolved at that level, the employee should contact the supervisor's supervisor and so on up to the department head. Employees are encouraged to resolve problems within their respective departments if possible.

The Personnel Department can often help in resolving problems, and in helping you to understand your rights under the respective collective bargaining agreement. The employee's union representative is frequently called upon to help with the resolution of problems. Often problems can be resolved informally without invoking the formal grievance process through discussions between the union, the department and the Personnel Department.

Once a formal grievance is filed, the provisions of the collective bargaining agreements are quite specific. Only a very few disputes ever get to the arbitration stage, primarily because the County and the unions it bargains with try their best to resolve disputes in a fair and equitable manner.

The County Executive's door is open to employees, however, s/he prefers that problems be resolved within the department, and normally does not get involved in intra-departmental problems.

Safety

The County expects all of its employees to be safety conscious, and to take action to correct observed hazards, either by direct action, or by reporting the perceived hazard to their supervisor or the department safety representative. Each employee will be briefed by the department during the first few days of employment concerning the location of safety bulletin boards, any special safety procedures to be taken, and evacuation procedures, etc.

Worker's Compensation (Industrial Insurance)

The County is a self-insured employer with regard to Worker's Compensation. Employees who are injured on the job are entitled to the same benefits they would receive under the Washington State program. The only difference is that the County pays the expense of medical bills and time loss to the employee instead of paying premiums to the State. You will be given a form outlining your benefits and rights under this program when you receive your orientation from the Personnel Department shortly after you are hired. Extra forms are available through Personnel should you require one.

3(POLICY3)

1-8-87

You have an obligation to the County to report all job related illnesses or injuries to your supervisor immediately. Any job related injury or illness should be reported.

Inter-office Policies

The policies outlined in the following pages provide general, and in some cases, specific guidance to all employees, regardless of department. You will note in reading through the manual, that each department may establish additional policies specific to its own operation which may include things like a dress code, sick leave reporting, vacation scheduling, policies on personal use of the telephone, etc. Each employee should make him/herself aware of any such inter-office policies by discussing them with their supervisor.

3(POLICY4)

1-8-87

WHATCOM COUNTY
PERSONNEL POLICIES AND PROCEDURES

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WHATCOM COUNTY
PERSONNEL POLICIES AND PROCEDURES

100.0 INTRODUCTION

100.1 AUTHORITY The following policies and procedures are promulgated under the authority of the Whatcom County Personnel System Ordinance.

100.2 OBJECTIVE The Personnel Policies and Procedures Manual is intended to supplement the Personnel Ordinance and establishes specific policies and procedures for the personnel management system in order to insure the achievement of the objectives outlined in Section 2 of the Ordinance.

100.3 SCOPE AND APPLICATION

A. This Employee Handbook should be retained throughout the employee's tenure with the County. It summarizes general statements of County policy. It is not all inclusive, however, and for additional information or interpretation, talk to your immediate supervisor, or contact the Personnel Department. This Handbook is not to be construed as a contract or covenant of employment. The County may revise this Handbook or its personnel policies, practices or procedures without prior notice as it deems necessary, from time to time. Employees will be kept advised of changes through notices on bulletin boards, employee meetings or issuance of revisions to the Handbook. When written changes are made, add them to your copy of the Handbook.

B. The Personnel Policies and Procedures Manual shall govern and affect the personnel administration of all employees and departments within the jurisdiction of Whatcom County except those exempted by the personnel ordinance. Employees of Nor-Bell are subject to policies developed for that institution, but, in addition, are subject to all but the following sections of this Manual.

<u>Section</u>	<u>Title</u>
105.	Position Classification Plan.
106.	Salary Administration
107.	Group Insurance
109.	Holidays
110.	Vacation
111.	Breaks
113.	Leave of Absence without Pay

- C. Collective Bargaining Agreements negotiated with unions representing employee groups will complement these Policies and Procedures.
- D. Nothing contained in this manual will supersede the provisions of collective bargaining agreements between the County and any labor organizations.
- E. Adoption of these policies does not preclude individual departments from developing policies of their own to amplify or expand this manual, provided that all such policies are reviewed and approved by the Personnel Director.

100.4 DEFINITIONS

ALLOCATION: The assignment of a position to the proper class.

ANNIVERSARY DATE: The date of assignment to the employee's current pay range and position or the date of appointment as a probationary or CETA employee, whichever is the most recent. Annual step raises, when authorized, are awarded on the anniversary date. An exempt employee's anniversary date for step raises is always adjusted to January 1st of the year following employment.

APPOINTING AUTHORITY: County officials who have the authority to appoint individuals to positions in the County service.

CETA EMPLOYEE: A person who was originally employed with the County under the terms of the federal Comprehensive Employment Training Act. CETA Employees were temporary employees.

CLASSIFICATION: One or more positions which are sufficiently alike with respect to duties and responsibilities to warrant using the same title, qualification requirement and pay grade.

CLASSIFICATION PLAN: The sum total of all classifications in service.

CONTRACTOR: A contractor is an individual, organization, or firm which has a contract with the County. The County may also contract with independent licensed professionals, such as an attorney to accomplish a certain task. Contractors or persons under contract to the County are not employees. They are not subject to the County pay or benefit program nor do they fall under the provisions of any collective bargaining agreement nor the Unrepresented Employee's Salary Resolution.

DEMOTION: The re-assignment of an employee from one classification to another classification of a lower pay grade or lower maximum rate of pay.

DEPARTMENT HEAD: A County official with the designated responsibility for the operation of a County department or office.

DISCIPLINARY ACTION: The action taken to discipline an employee ranging from a verbal reprimand up to and including discharge.

DISMISSAL: The involuntary termination of an employee regardless of the reason.

ELECTED OFFICIAL: An elected official is a person who is elected by vote of the people of the County, or who has been legally appointed to fill a vacancy in an elected position in County government.

EMPLOYEE: An individual who has been legally appointed to a position in a department in Whatcom County government. Recent employees will have been appointed in writing to a temporary position, an exempt position, or to a probationary position. Employees are paid through the County payroll system, and are subject to the Personnel Ordinance, the respective collective bargaining agreement (if any), and these policies.

ENTRY LEVEL PAY RATE: The minimum rate in the pay range prescribed for a class.

EXEMPT OR UN-REPRESENTED EMPLOYEE: An exempt employee is a County employee who is not represented by a union. Exempt employees are employees at will, that is, they may be discharged with or without cause, with or without notice, at any time.

HIRE DATE: The date at which the present continuous service as an exempt, a CETA or a probationary employee began.

JOB SPECIFICATION OR JOB DESCRIPTION: A written description of a job classification containing the title of the position, department and location, a general statement or summary of the purpose of the position, examples of the typical major duties performed, and minimum qualification requirements.

LAYOFF: The involuntary separation of an employee because of lack of work, lack of funds, or the abolishment of a position.

PART-TIME OR TEMPORARY EMPLOYEE: A part-time or temporary employee is one who is exempt from union membership by the terms of the respective collective bargaining agreement. Part-time/temporary employees have not received probationary appointments nor are they entitled to the employee benefit package unless the terms of the pertinent collective bargaining agreement are met.

PAY PLAN: The schedule of pay ranges for all classified County jobs.

PAY RANGE: The minimum, intermediate, and maximum rates of pay established for each class of positions.

PAY RATE: The specific dollar amount established for each step within a pay range.

POSITION: An aggregate of duties and responsibilities to be performed by an employee. A position may be filled or vacant; full-time or part-time.

PROBATIONARY PERIOD: A preliminary trial period of employment during which an employee is required to demonstrate his/her fitness for employment. Probationary employees may be terminated without cause during the probationary period. Exempt employees have no probation period since they are employees at will. They may be terminated at any time without cause.

PROMOTION: The assignment of an employee from one classification to another, with increased responsibility and a higher maximum rate of pay.

RATER: The supervisory official who is required to conduct performance evaluations for all employees under his/her immediate supervision.

RECLASSIFICATION: The reassignment of a position from one classification to a different classification to correct an error in the original assignment or to recognize a significant change in the nature of duties and responsibilities being performed.

REINSTATEMENT: The action by which an employee after leaving County service is reinstated to a position with pay and fringe benefits comparable to that which he/she received at the time of his/her separation or leave, e.g., return from military or disability leave.

REVIEWING OFFICER: The rater's immediate supervisor who is required to review each performance evaluation before it becomes part of an employee's permanent record.

SEASONAL APPOINTMENT: An appointment made to a position which requires the services of an incumbent only during certain specific periods of the year. Seasonal employees are temporary employees.

SELECTION DEVICE: Devices used separately or in combination as appropriate to obtain the best qualified candidates for vacant positions. Such devices include work sample and performance tests, practical written tests, oral examination, rating of training and experience, etc.

SEPARATION: The removal of an employee from the payroll for either voluntary or involuntary reasons, to include dismissal, resignation, layoff, retirement, or death.

STEP INCREASE: A pay increase of one step granted to employees on their anniversary date based on a combination of satisfactory work performance and length of service in their present position.

TEMPORARY EMPLOYEE: See PART-TIME EMPLOYEE.

TRANSFER: The assignment of an employee from one position to another in the same or a different classification with the same pay range.

100.5 RESPONSIBILITY AND AUTHORITY

Proper organization and delegation of authority are essential to effective and efficient County government administration and management. The responsibilities and authorities delineated in this section are intended to establish a clear understanding of the role that each segment of County government must play in order to create a sound personnel management program.

A. COUNTY COUNCIL: The Council has among other responsibilities indicated in the Home Rule Charter and the Whatcom County Code, the responsibility and authority to:

1. Approve the County's budget
2. Approve all Personnel Rules included with the County personnel system ordinance.
3. Establish and approve system-wide Policies and Procedures for the efficient operation of the County's work force.

B. COUNTY EXECUTIVE: The County Executive is accountable for the overall administration of the Whatcom County Personnel System. The County Executive shall hold all subordinate

line management accountable for the performance of their departments which includes the delivery of services and consistent management of assigned employees.

- C. PERSONNEL DIRECTOR: The Personnel Director is responsible to the County Executive for carrying out all of the tasks outlined in Section 101. of this Manual.

- D. DEPARTMENT HEADS: Department Heads shall have the responsibility and authority consistent with these Policies and Procedures, the Personnel Ordinance and applicable collective bargaining agreements to:
 - 1. Administer and comply with the County-wide Personnel Ordinance, Policies Manual, and Merit System provisions as they apply to the management of their departments.
 - 2. Keep employees in their departments informed of current personnel policies and procedures.
 - 3. Appoint employees to positions within their respective departments in accordance with established personnel procedures and policies.
 - 4. Develop, as needed, employee training programs for employees within their respective departments.
 - 5. Administer discipline within their respective departments and delegate such authority to supervisory personnel as deemed appropriate.

- E. SUPERVISORS: To the extent that superiors delegate authority to them, and consistent with these Policies and Procedures, the Personnel Ordinance, and applicable collective bargaining agreements, supervisors shall:
 - 1. Interview applicants for positions under their supervision.
 - 2. Implement personnel policies, rules and regulations in the units under their supervision.
 - 3. Administer discipline to employees under their supervision.

4. Conduct first step grievance hearings.
5. Conduct personnel evaluations.

101.0 PERSONNEL DEPARTMENT

101.1 FUNCTIONS OF THE PERSONNEL DIRECTOR

The Personnel Director shall direct all of the personnel department's administrative and technical activities, administer the provisions of the Personnel ordinance and in addition shall perform the following duties:

1. Appoint employees to the personnel department and such other special assistants as may be necessary to effectively implement the provisions of the personnel system ordinance.
2. Develop and maintain the classification plan.
3. Develop and administer the compensation plan, subject to the approval of the County Council.
4. Insure uniformity in the application of discipline and the processing of employee grievances by developing standardized procedures for all departments.
5. Maintain and revise, when necessary, the Personnel Policies and Procedures Manual.
6. Prepare and adopt such forms, reports and procedures as may be necessary to carry out the County's personnel programs.

102.0 EQUAL EMPLOYMENT OPPORTUNITY

102.1 POLICY STATEMENT

It is the policy of Whatcom County to provide equal employment opportunities to all persons without regard to race, color, religion, age, sex, national origin, marital status, sensory, mental or physical handicap, except where such characteristics are a bona fide occupational qualification, as defined in the Washington State Law Against Discrimination (RCW 49.60). This policy is applied to recruitment, selection, promotion, demotion, transfer, lay off, recall, termination, compensation, benefits and all other terms and conditions of employment.

102.2 RESPONSIBILITY

- A. COUNTY EXECUTIVE: The Whatcom County Executive has the overall responsibility to ensure that

the County's equal employment opportunity policy is communicated and carried out. The Executive will periodically review the affirmative action program with special emphasis on the effectiveness, timeliness and completeness of the program. The Executive will enlist and require the cooperation and support of all department heads and supervisory personnel of the County to meet their personal responsibilities in achieving the County's equal employment opportunity objectives.

B. **EQUAL EMPLOYMENT OPPORTUNITY:** The development and overall implementation of the Affirmative Action program shall be the responsibility of the Personnel Director acting as the Equal Employment Opportunity Coordinator. The Personnel Director shall have the responsibility of assuring that the County is in compliance with the current anti-discrimination laws, rules and regulations.

C. **DEPARTMENT HEADS:** Department Heads and their supervisors have the responsibility to implement County Equal Employment Anti-Discrimination and Affirmative Action Policies within their respective departments.

103.0 **EMPLOYEE RELATIONS**

103.1 **UNIONS** It is the County's intent to promote and maintain a positive employer-employee relationship and to comply with the Public Employees Collective Bargaining Act, RCW 41.56, and related rules and regulations.

103.2 **EXEMPT EMPLOYEES**

Unless specifically noted, all of the policies and procedures apply to Exempt employees as well as union employees. The Unrepresented Employee's Salary Resolution, passed each year by the County Council, sets the salary of each exempt position, and outlines the specific benefits to which exempts are entitled.

103.3 **FORMER CETA EMPLOYEES.**

Employees hired under the CETA program were temporary employees. They had no seniority rights. CETA employees who have been hired as full time employees begin accruing seniority within the hiring department as of their probationary appointment date in the department. However, they accrue vacation, sick leave and longevity credit based on their CETA hire date.

104.0 PERSONNEL RECORDS

104.1 PURPOSE The development and maintenance of an effective personnel transaction procedure and personnel records management system is essential to a sound personnel program. The primary purpose of these systems and procedures shall be to:

- A. Establish and maintain clear lines of authority for the processing of personnel transactions and management of personnel records.
- B. Establish and maintain uniform, easily accessible, and complete employment records of all County employees.
- C. Establish and maintain clear and efficient procedures for processing all transactions that affect each employee.

104.2 RESPONSIBILITY AND AUTHORITY

A. PERSONNEL DIRECTOR: The Personnel Director shall:

- 1. Have overall responsibility for establishing, maintaining, and coordinating personnel transactions, records management systems, and procedures for all County employees.
- 2. Establish and maintain a central personnel file to include the transactions, records and other pertinent legal employment information for each County employee.
- 3. Establish and maintain personnel transaction forms and procedures.
- 4. Establish and maintain position complement control records and procedures.
- 5. Advise and assist department heads on all County personnel transaction and records management system policies and procedures.

B. DEPARTMENT HEADS: Department heads shall:

- 1. Initiate and process personnel transactions affecting their employees using forms prescribed by the Personnel Director.
- 2. Maintain a written record of contacts with employees in accordance with good personnel management practices. Appropriate records shall be forwarded to the personnel director for inclusion in the central personnel file.

- C. **EMPLOYEES:** All employees shall be responsible for notifying their supervisor of any changes which affect their personal status.

Employees have the right under state law to inspect their personnel records, and to receive copies of the documents in the file. A record must be maintained by the supervisor of all such inspections.

105.0 **POSITION CLASSIFICATION PLAN**

105.1 **PURPOSE:** The position classification plan provides the County with standardized titles and common job language which is critical to the effective administration of personnel activities, such as:

- A. Human Resource planning and budgeting;
- B. Establishing job performance standards;
- C. Establishing fair and equitable pay;
- D. Developing valid selection and recruitment pay;
- E. Developing training programs, and
- F. Establishing appropriate career lines.

Under the position classification plan, all County positions covered under the personnel system ordinance shall be grouped, divided, and graded into designated classifications having distinctive titles, based upon the type of service and the character of work performed, the qualifications required, the duties and functions involved, the responsibility assigned and the supervision received. In this regard, the following principles shall apply:

- A. The classification shall be made on the basis of all the positions taken as a whole, and not on a department basis, so that similar positions in different departments shall be included in the same classifications; provided however that this provision shall not apply to those positions involving functions, duties or responsibilities which are substantially unique to a particular department.
- B. Each classification shall consist of one or more positions sufficiently similar with respect to duties and responsibilities so that job titles and minimum qualifications for each classification will be substantially the same.

- C. Two or more classifications performing the same or substantially similar work, but differing as to the duties, responsibilities and supervision involved, shall be arranged and graded similarly and in the established line of promotion.

105.2 ALLOCATION OF POSITIONS

The personnel director shall analyze and evaluate the duties, responsibilities and qualifications required of each position in the classified service and then allocate each position to the appropriate class.

105.3 POSITION DESCRIPTIONS

Written position descriptions shall be prepared and maintained for each position in the classification plan. The descriptions shall include a title, department, a summary of the position purpose, examples of the major duties or tasks performed in the position, and the statement of the desired or requisite qualifications for the particular position. Special requirements, where appropriate, such as licensing or certification, shall also be included. Qualifications for a position must be reasonably related to the ability to perform the job in question.

105.4 RECLASSIFICATION

- A. Request for reclassification - Department Head: Whenever it becomes necessary to make a permanent and/or substantial change in the duties or responsibilities of a position, the department head shall submit to the Personnel Director a written report of the facts and the proposed change.
- B. Requests for reclassification: Whenever an employee believes that his/her position is improperly classified, the employee (or the employee's bargaining representative) may submit a written request for reclassification to the Personnel Director. The request must include the pertinent facts involved, the reasons for the request, and a definition of the duties actually and currently being performed. The request may be submitted through either the department head or the employee's bargaining representative.

- C. Investigation of reclassification request: Requests for reclassifications shall be investigated by the personnel director. If the job is improperly classified, or the duties and responsibilities of the position are no longer within the scope of the existing position, the personnel director, with the approval of the department head, shall forward his/her recommendation for placement to the County Executive for final approval or disapproval. If it is determined that the position is properly classified, the position will remain at its current level. Except under extraordinary circumstances, reclassifications become effective on January 1st, of the coming year.

In order to justify a reclassification the position must have had a significant change in duties and responsibilities since the position was originally classified.

- D. Maintenance of the classification plan: The Personnel Director shall periodically review the entire classification plan or any part thereof at his/her own initiative or at the request of a department head, employee or other interested party. The purpose of such review shall be:
1. to ascertain whether or not the plan accurately reflects existing alignment of job classifications;
 2. to determine the accuracy of class specifications, and
 3. to assure that positions are properly classified. As appropriate, the Personnel Director shall take whatever action he/she deems appropriate to amend and update the classification plan.

106.0 SALARY ADMINISTRATION

106.1 THE PAY PLAN

The pay plan shall include the schedule of pay ranges, consisting of minimum, intermediate, and maximum rates of pay for all classes of position employed the County. The objectives of the pay plan shall be to:

- A. Provide an appropriate salary structure to recruit and retain competent employees.
- B. Provide appropriate pay incentives for high employee productivity.

106.2 STANDARDS FOR DEVELOPMENT OF THE PAY PLAN

The pay plan shall be directly linked to the classification plan and shall be based on the principle of equal pay for equal or similar work. Pay ranges within the pay plan shall be determined with due regard to such factors as:

- A. Uniformity of pay for each class;
- B. The relative difficulty and responsibility of work;
- C. The recruiting experience of the County;
- D. The prevailing rates of pay in both public service and private industry;
- E. Cost of living factors;
- F. The financial policies and circumstances of the County;
- G. Other pertinent economic considerations.

106.3 ADOPTION OF THE PAY PLAN

The Personnel Director, subject to the approval of the County Executive and the County Council, shall be responsible for the development and maintenance of the pay plan. The plan shall be submitted to the County Council for adoption by resolution.

106.4 ADMINISTRATION AND AMENDMENTS

The Personnel Director shall be responsible for administering the pay plan. He/she shall insure that the plan is kept current through periodic reviews and comparative studies of pertinent factors affecting levels of pay. When appropriate, the Personnel Director shall recommend to the County Executive necessary amendments to the pay plan.

106.5 ENTRY LEVEL PAY RATE

The entry level pay rate shall normally be the Step to which a new employee is assigned. A department head may, with the prior approval of the County Executive make an appointment above the entry level Step. Approval of appointments above the entry level pay rate shall be granted only when there are no available or acceptable candidates at the entry level rate or in recognition of qualifications which clearly exceed the minimum requirements for the position. In no instance will an appointment be made above the minimum where equally qualified County employees earn less or where equally

qualified applicants are available at that starting rate. Under no circumstances will an employee receive an entrance pay rate below the minimum rate prescribed for the classification to which appointed.

106.6 STEP INCREASES

A. Union Employees.

1. Inside, Public Works, Parks, and Juvenile Contracts.

A new employee, placed in any step in the pay plan, shall be eligible for the first step increase upon completion of one year of service. Six months later, (after eighteen months service) they move to the next step in the Pay Plan which is 1.9% higher than their present Step, and so on until they reach the top Step, provided any job performance evaluations required for a Step raise under the union contract is satisfactory.

Advancement from Entry Step to Step 3 shall be made on an automatic basis if the probation period is successfully completed. Advancements to steps 3A, 4A, 5A, 6A, and 7A shall not be granted automatically but will be based on satisfactory work performance in addition to length of service in a classification. The performance of the employee shall be evaluated by his or her supervisor at least forty-five days prior to the decision for each pay step increment. The employee must have an overall evaluation of "satisfactory" or higher for the in-grade increment to be granted. Eligibility for progression to the next pay step shall occur on the first day of the month in which the employee annual, or semi-annual anniversary date falls.

2. Sheriff's Deputy and Corrections Officer and Support Staff Contracts.

The first two steps for Deputies and Corrections Officers in these Pay Schedules are six months each. All other steps in the Pay Schedule are annual. Should an employee receive a promotion, the employee's anniversary date for pay purposes shall be changed to the effective date of the promotion.

3. Nor-Bell Care Center

Employees hired into the Nurse Aide, Laundry, Housekeeping, etc., and Cooks, Custodian Classification shall receive their first step increase upon completion of their ninety (90) day probation period, and annually thereafter. Effective January 1, 1989, all new employees shall receive their first step increase following one years service.

4. Ferry. The Ferry contract does not provide step raises.

B. Exempt Employees. Exempt employees shall be granted step increases in accordance with the schedule in the Unrepresented Employees Salary Resolution.

106.7 PART-TIME AND TEMPORARY EMPLOYMENT

Part-time and temporary employees shall be compensated on an hourly basis equivalent to the entry level hourly rate established for the classification in which they work. They are not eligible for step increases regardless of length of service. Such employees are not eligible for benefits unless they meet the minimum requirements of the respective union agreement or an RCW which applies.

Seasonal employees working in non-classified positions may be paid at rates established by the employing department, after a rate review by the Personnel Director.

106.8 PAY RATE ADJUSTMENT

The following personnel actions shall affect the pay status of an employee in the manner described:

- A. TRANSFERS: When an employee is transferred from one position to another within the same pay range, the employee shall continue to receive the same pay step and shall maintain the same anniversary date.
- B. PROMOTIONS: When an employee covered by a union contract is promoted, from one class to another having a higher pay range, that employee shall receive an increase based on the terms of the particular union contract. Exempt employees shall follow the rule established in the Unrepresented Employees Salary Resolution.

When a union employee is promoted to an exempt position, the calculation of the new salary is based on the Unrepresented Employees Salary Resolution. If the employee is currently paid longevity, the longevity amount is added to the base salary before the calculation is made.

When a Nor-Bell employee is promoted, they move to the next higher wage which is above their present wage in the new pay range.

- C. DEMOTION: When an employee is demoted for cause from one class to another having a lower pay range, the individual shall be placed in a step within the lower range which provides at

least a 3% reduction in pay. When an employee is demoted for administrative purposes through no fault of the employee, the employee shall be paid the top step in the lower pay range, if their pay is greater than the top step, or the nearest pay step to their current rate of pay, rounded down, whichever is appropriate.

- D. REINSTATEMENT AFTER LAY-OFF: Seniority rights to reinstatement are governed by the appropriate collective bargaining agreement.

Employees under the Inside, Parks, Public Works, and Juvenile contracts who have been laid-off shall continue to accrue seniority during a twelve month period. Upon recall to work, they retain any sick leave accrual which was not paid off, and accrue vacation at the rate dictated by their seniority.

Employees in these contracts are afforded the opportunity to fill vacancies in any department covered by these agreements after department employees have had an opportunity to fill the vacancy, but prior to vacancies being opened to the public, provided:

- 1) all members who had been laid off under the terms of the respective contract have been recalled to work or have rejected such an offer;
- 2) the employee is qualified to fill the position;
- 3) the employee has the greatest seniority among those still laid off;
- 4) the employee satisfactorily completes a 180 calendar day probation period.

Reinstated employees will be paid at the salary level which has been budgeted for the position to which they are hired, unless their salary before lay off is less than the amount budgeted. In that event they will be paid at the closest higher step to that earned when they left County employment. If they retain their seniority rights, step raises are awarded on their original anniversary date. If the twelve month period has expired, seniority rights expire, and the former employee begins employment anew at the entry level pay step.

- 106.9 OVERTIME
- A. Employees, other than those exempt from the Fair Labor Standard's Act, (FLSA) will be paid overtime in accordance with the provisions of their respective collective bargaining agreements. Employees not exempt from FLSA, but exempt from union membership are entitled to compensatory time off (maximum of 240 hours) at time and one half for all overtime hours worked.
- B. Employees shall not work overtime without departmental authorization.

- C. Overtime for exempt employees is authorized only under conditions outlined in the Unrepresented Employees Salary Resolution.
- D. Calculation of the "regular rate of pay" will comply with Fair Labor Standard's Act Regulations.

106.10 CALL BACK PAY

Employees other than exempt employees shall receive call back pay when they are requested to return to work on a week-end, or after completing a regular working day and having left work for the day in accordance with provisions of their respective collective bargaining agreements.

In those contracts with call back provisions, the overtime rate of the calendar day on which the time is worked is paid. For example if a call out is made at 10:00PM on Saturday and work continues after midnight the Saturday rate is paid for the hours worked on Saturday; the Sunday rate is paid for hours worked on Sunday.

If call out overtime is worked prior to the beginning of a shift, and extends into regular shift hours, the rate paid changes to straight time. All work performed during normal shift hours is paid at straight time.

Once an individual is called out and paid a guaranteed number of hours at overtime, the individual is considered on duty for that period of time, even though the work may be finished and s/he returns home. If the guarantee was four hours at overtime, a second call out within four hours of the original call out does not warrant a second four hour guarantee. A second call out after the four hours has elapsed, would begin a second period.

106.11 UNEMPLOYMENT COMPENSATION

The County shall provide unemployment compensation for employees who may be laid off. Washington State laws and Employment Security Department Rules and Regulations regarding unemployment compensation shall be observed by the County.

Unemployment claims are processed and paid through the Personnel Department. All correspondence concerning unemployment including the "Notice to Employer" is to be forwarded to the Personnel Department, and not submitted directly to the Washington State Employment Security Department.

106.12 WORKING OUT OF CLASSIFICATION

With regard to those Teamsters contracts which contain an Section on "Working out of Classification", an employee is entitled to pay in the higher classification if the employee is assigned by the supervisor to perform the duties of the higher paid employee. Such assignments should be made in writing.

107.0 GROUP INSURANCE

107.1 ELIGIBILITY

All employees meeting the requirements of their respective collective bargaining agreement or the Unrepresented Employees Salary Resolution shall be eligible for insurance benefits in accordance with the terms of the respective carrier contract with the County.

107.2 COVERAGE

The County shall provide benefit coverage for employees in accordance with the terms of their respective collective bargaining agreement.

108.0 SICK LEAVE

108.1 GENERAL

Cumulative sick leave with pay shall be provided to eligible County employees in accordance with the provisions of their respective collective bargaining agreement. In general, one day of sick leave is accrued each month even if an employee has accrued the maximum sick leave permitted under a union contract. In such a case, the County's policy is first in, first out; that is, sick leave accrued ten years ago is the first used or lost if the individual loses time because of illness, or if an additional day is accrued after a month of no time loss.

Upon request, an employee shall provide the County with proof of incapacitating illness.

108.2 SICK LEAVE DEDUCTIONS

There shall be full deductions from any sick leave accumulation for all absences from work on account of doctor, or dentist appointments, illness or disability, exclusive of any illness or disability covered by Worker's Compensation. Whenever any earned sick leave is used by an employee, the number of working hours used rounded to the nearest quarter hour, shall be deducted from his/her total accumulated sick leave. The employee shall accrue sick leave credit at the prescribed rate up to the maximum amount authorized by the terms of their respective collective bargaining agreement.

Sick leave may be used to care for dependent children under the age of eighteen (18) when they have a health condition that requires supervision or treatment.

Because exempt employees are able to cash out unused sick leave under the terms of the Unrepresented Employees Salary Resolution, it is necessary to keep track of sick leave used by exempt employees. Therefore, when an employee exempt from the Fair Labor Standards Act is ill, a deduction will still be made from the sick leave bank, even though they are salaried employees.

109.0 HOLIDAYS

109.1 GENERAL Employees shall be paid for holidays in accordance with the provisions of their respective collective bargaining agreement.

109.2 WEEKEND HOLIDAYS

If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

110.0 VACATION

Vacations shall be granted to all full-time employees in accordance with the provisions of their respective collective bargaining agreement.

110.1 VACATION SCHEDULING

Employees are responsible for knowing their vacation standing. Seniority shall be the determining criteria for vacation schedule priority. Each employee may select the vacation dates desired from the departmental vacation chart. If more than one employee signs up for the same vacation period, the employee with the most seniority shall have priority. Normally, only two weeks' vacation time will be given priority on the initial sign-up. Vacation time in excess of two weeks will be allotted after everyone has chosen dates for the one or two week vacation to which they are entitled. This policy may be modified by the department head if circumstances warrant it. Those failing to sign up within the scheduled time period will lose their vacation priority, provided they have received prior notification of the deadline. Each vacation request must be approved by the department head and the County reserves the right at all times to restrict the taking of vacations during peak workload periods, or to determine the number of employees that may be on vacation at one time in a single department. Departments may specify vacation scheduling deadlines.

110.2 NEW EMPLOYEES

New employees covered under Teamster contracts shall be eligible for their first vacation January 1st of the year following their employment date on the basis of one day for each month of service during the previous year, to a maximum of ten (10) days. This period constitutes the 1st employment year even if it consists of only one month. Thereafter, vacation accrual will be on a calendar year basis. For the purpose of this section, the employment year in the Treasurer's Department shall be June 1st to June 1st.

110.3 PRO RATED VACATIONS

When an employee eligible under the collective bargaining agreement terminates or is terminated, he/she shall be paid for any unused vacation accrued including vacation accrued from January 1st to date of severance of employment. Employees of the Treasurer's Department shall use June 1st to date of severance of employment in calculating final accrual.

111.0 BREAKS

Union Employees shall be allowed a rest period of fifteen (15) minute for each four (4) hours of working time. Rest periods shall be scheduled as near as possible to the mid-point of the work period. No employee shall be required to work more than three hours without a rest period.

A lunch break of at least thirty (30) minutes but not more than sixty (60) minutes shall be allowed which commences no less than two hours nor more than five hours from the beginning of the shift.

112.0 PAID LEAVES OF ABSENCE

112.1 JURY SERVICE

The department head shall be informed promptly when a staff member receives a letter requesting his/her appearance for jury selection or to serve as a juror. Written evidence of selection for jury duty may be requested by the department head. While serving on the jury, the employee shall receive the difference between his/her actual salary and the jury duty pay. If an employee reports for jury duty and is dismissed early in the day, the employee shall, if possible, return to work for the remainder of the calendar day and continue his/her normal work schedule.

112.2 MILITARY LEAVE

The County shall observe the State Statute regarding military leave which states the following:

Every officer and employee of the state or of any county, city, or other political subdivision thereof who is a member of the Washington National Guard or of the Army, Navy, Air Force, Coast Guard, or Marine Corps Reserve of the United States, or of any organized reserve or armed forces of the United States shall be entitled to and shall be granted military leave of absence from such employment for a period not exceeding fifteen days during each calendar year. Such leave shall be granted in order that the person may take part in active training duty in such manner and at such time as he may be ordered to active training duty. Such military leave of absence shall be in addition to any vacation or sick leave to which the officer or employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the officer or employee shall receive from the state, or the county, city or other political subdivision, his/her normal pay. (RCW 38.40.060).

112.3 BEREAVEMENT LEAVE

If an employee suffers a death in the immediate family, the employee shall be allowed bereavement leave in accordance with the provisions of his/her respective collective bargaining agreement.

112.4 ABSENCE DUE TO ADVERSE WEATHER OR EMERGENCIES

Absence from work due to an employee's inability to report for scheduled work because of severe inclement weather, conditions caused by severe inclement weather or other unusual emergency conditions shall be charged first to any compensatory time which had been accrued. If the employee has no compensatory time accrued, the absence will be charged to one of the following in sequential order, unless the employee wishes to designate a specific alternative option.

- a. Any accrued vacation leave,
- b. Accrued sick leave up to a maximum of three days in a calendar year,
- c. Leave without pay.

Tardiness due to an employee's inability to report for scheduled work because of severe inclement weather, conditions caused by severe inclement weather, or other unusual emergency will be allowed up to one hour at the beginning of the work day.

Tardiness in excess of one hour shall be charged, as provided above. Employees who wish to leave work early during adverse weather conditions may do so with the concurrence of their supervisor. The time lost will be charged as provided above.

113.0 LEAVE OF ABSENCE WITHOUT PAY

113.1 NON-DISABILITY LEAVE

On rare occasions, leave of absence without pay may be granted an employee. Requests for such leave must be made in writing and be approved by the department head in question with the period of leave being specified and approved in writing. Leaves of absence without pay for periods of five or less work days may be granted by the Department Head. Requests for longer periods of time will be forwarded to the County Executive for final approval. Leave of absence without pay may be granted with the actual time period contingent upon the reason for the leave, the needs of the department, the needs of the employee, the past performance of the employee, the availability of a temporary replacement, and other pertinent facts. Except as otherwise provided in a collective bargaining agreement, leaves of absence will not be granted for periods longer than eight-nine (89) calendar days. Leave of absence without pay must be requested at least two weeks prior to the date the leave is to begin to allow time to process the request and to find a replacement, if that is necessary. Leave without pay will not be considered until after the employee has used or scheduled all compensatory time, vacation, or other paid holiday time which has been accrued.

113.2 DISABILITY LEAVE

Unless a collective bargaining agreement specifies otherwise, disability leave without pay may be granted a non-work related ill or injured employee for periods not to exceed eighty-nine (89) calendar days. Leave without pay will not be considered until after the employee has used all sick, compensatory, vacation, and holiday time which has been accrued. Approval of a request for Disability Leave is subject to the conditions outlined in 113.0 above, and upon the expectation that the employee will return to work within the allotted time period. An estimate from the doctor of the length of time the employee is expected to be off work may be requested prior to approval. Benefit premium coverage is not provided the employee by the County during leave without pay unless such coverage is provided for in either a collective bargaining agreement or the terms of the benefit coverage. Depending upon the terms of the contract, self payment for coverage may be an option.

Employees returning from disability leave within the allotted period will be reinstated to their original job or to a position of like status and pay without loss of service credit or seniority rights. Vacation and sick leave are not accrued during a period of leave without pay, but accrual will begin again upon return to employment. Failure to return to work on or before the end of the leave period will result in termination of employment.

113.3 MATERNITY LEAVE

The County's policy concerning maternity leave is in compliance with the pregnancy and disability amendment to Title VII of the Civil Rights Act of 1964, which generally provides that maternity leave be treated as a temporary disability.

There is no fixed time when an employee must stop work. That determination is made on advice of her doctor. The policy governing disability leave set out above in this section applies to maternity leave. Sick leave, compensatory time, vacation time, and accrued holiday time is to be used before leave without pay is granted.

There is no fixed time for an employee to return to work, again that is a determination to be made on advice of her doctor. However, sick leave may only be used while the employee is unfit to return to work due to illness, pregnancy and/or delivery. Once the doctor authorizes a return to work, (Usually about six weeks) use of sick leave is no longer authorized. Upon return to work, women have a right to their same (or similar) job and rate of pay.

114.0 WORK RULES

The orderly and efficient operation of the County government requires that certain work rules be established. Work rules covering personal standards of conduct as well as standard operating procedures are necessary to protect the health and safety of all employees, maintain uninterrupted service, and to protect the County's goodwill and property. The following work rules shall be applicable to all County employees. These rules are not intended to be all inclusive and the County shall, when it deems appropriate, modify or establish different rules to insure the effective operation of the County government.

A. Employees must be at their designated work area on time and ready to work. Employees shall remain at their work area, at work, until the scheduled quitting time unless permission to leave is granted by their supervisor.

1) Non-union employee's schedules and work hours may vary depending upon department requirements.

- B. Where the operations are continuous, an employee shall not leave his/her post until replaced by the next shift employee or until he/she is relieved by his/her supervisor. The employee must notify the supervisor that overtime may be necessary no later than 30 minutes before the next shift commences when a need for overtime is anticipated.
- C. Employees shall follow all safety regulations to include the wearing of safety articles and the using of protective equipment. Employees shall immediately report accidents or injury to their supervisor.

It is the state law and the policy of the County that seat belts be worn by all drivers and passengers riding in County vehicles. Only County employees shall operate County vehicles.

- D. Employees shall be responsible for and shall not misuse County property, records, or other materials in their care, custody and control. County property, records or other materials shall not be removed from County premises without written permission or under the direction of a manager or official who has the responsibility for the items. Property, records and other materials which are needed to perform work off the premises must be returned. Theft of County property is grounds for dismissal.
- E. Employees shall avoid littering work areas.
- F. Employees shall deal with the public, their supervisors, and their fellow employees in a courteous and professional manner.
- G. An employee shall immediately report to his/her supervisor his/her inability to report to work and the reason therefore. Notification should be made prior to the beginning of the work period and as early as is practical so the employer can schedule around the absence.
- H. Employees shall not park in designated prohibited areas.
- I. Employees shall notify their supervisor whenever there is a change in personal data which relates to their job benefit package or other work related particular.
- J. Employees shall not restrict or interrupt work, or interfere with the work of others.

- K. Employees shall report for and remain at work only in a physical condition that enables them to perform the full range of their responsibility.

Employees shall report for work dressed in clothing which is appropriate for their job assignment.

- L. Employees shall not neglect their duties and responsibilities, or refuse to perform assigned work, or to comply with a lawful directive.
- M. Employees shall not engage in immoral conduct, fight, engage in horseplay, gamble or use abusive language while on duty or on County premises.
- N. Employees shall not use County telephones for personal calls, or conduct personal business during working hours on County premises.
- O. Employees shall not post notices on the County premises without prior approval from the appropriate authority.
- P. Employees shall not possess or use intoxicating beverages or illegal drugs during the work day,
- 1) Employees shall not possess or use intoxicating beverages or illegal drugs on County premises.
 - 2) Employees who report for work, or who are discovered to have the odor of intoxicants on their breath while at work may be subject to the full range of disciplinary action.
 - 3) Employees are required by federal law to notify their department head within five days of their conviction of any violation of a federal or state criminal drug statute which occurred in the workplace.
 - 4) Employees shall not possess or use firearms or other weapons on County premises unless such possession or use is necessary to the performance of their duties.
- Q. Employees shall not falsify records, reports or claims of illness or injury.
- R. Employees shall not engage in activities during working hours that are harmful to other County employees or which inhibits their effectiveness on the job.

- S. Employees shall follow all work orders and instructions unless they violate a rule or regulation or impose health or safety hazards. Willful disobedience of a lawful order is an offense which is grounds for dismissal.
- T. Absence from work other than on authorized leave shall be treated as leave without pay, and may be grounds for disciplinary action. Unauthorized absence from duty may result in separation from service.
- U. Conviction of a crime related to the circumstances of employment may constitute grounds for disciplinary action pursuant to WAC 162-16-060. Evidence of probable cause which results in a formal charge against any employee for a crime which is related to the job, shall constitute sufficient grounds for suspension without pay, and/or dismissal.
- V. Sexual harassment of another person by a County employee within the scope of employment will not be tolerated, and, depending upon the seriousness of the offence, may be grounds for dismissal. (See Resolution 83-10 - defining County Policy on Sexual Harassment, included in this Manual.)
- W. Employees who have knowledge of wrongdoing or illegal activity which has an effect on County operations or property have a duty to communicate this information to their supervisor.
- X. Supervisors shall not be assigned direct supervisory responsibility over other close family members. Close family members are defined as husband, wife, or mother, father, sister, brother or grandchildren of either spouse.

114.1 DISCIPLINARY ACTION

Employees who violate any of the work rules set forth in Section 114.0 shall be subject to disciplinary action up to and including discharge.

114.2 DRUG-FREE WORKPLACE ACT REQUIREMENTS

Federal law requires that appropriate disciplinary action, up to and including discharge, be taken against employees convicted of drug violations in the workplace. Employees convicted of such drug violations will be terminated, or, if circumstances warrant a less severe penalty, they must agree to begin participation in a drug or alcohol assistance or rehabilitation program within thirty (30) days of the County being notified of the violation. Failure to satisfactorily complete such a program,

or the occurrence of any future drug related violation will result in termination.

The Personnel Department is available to assist employees in locating a suitable rehabilitation program.

114.3 ADMINISTRATION OF WORK RULES

The Personnel Director shall be responsible for the overall administration of the work rules to include recommending revisions, deletions, or adoption of new rules. He/she shall also be responsible for advising department heads on the proper implementation of work rules.

115.0 GRIEVANCES

Any employee having a problem or grievance regarding his or her employment shall first discuss the problem with his/her immediate supervisor. If the problem is not solved to the employee's satisfaction, the employee has the right to discuss the problem with the next level of supervision, and so on, in an effort to resolve the problem within the department.

A. Union employees.

If the problem cannot be solved within department channels, the employee has the right to file a grievance with his or her union representative about the matter.

B. Exempt employees.

Exempt employees who are unable to resolve problems concerning employment within their departments, may appeal their case to the County Executive for final resolution. The County Executive may at his/her discretion refer the matter to an impartial three person panel (which normally will include the Personnel Director and two others appointed by the Executive) for investigation and recommendation.

115.1 DEFINITION OF A GRIEVANCE

A grievance, for the purpose of this document, is a complaint regarding any dispute or controversy which might arise as to the interpretation or application of a collective bargaining agreement; alleged poor working conditions; unjust application of discipline; or unfair application, interpretation, or violation of rules, policies and procedures of the County, or of the department for which the employee works. Grievances involving union employees covered by a collective bargaining agreement will be handled in accordance with the terms of that agreement.

115.2 COUNTY POLICY

It is the policy of Whatcom County to treat all employees equitably and fairly in matters affecting their employment. Each employee of the County will be provided ample opportunity to understand and resolve matters affecting his/her employment which the employee believes are unjust. Any employee having the right to file a grievance may do so without fear of reprisal. Employees are encouraged to resolve their employment problems through the channels described above before going outside the system. Nothing in this section shall be deemed to abrogate any legal means of redress to the courts.

115.3 PERSONNEL DIRECTOR

The Personnel Director shall be advised of all grievances which:

- A. cannot be resolved at the first line supervisor's level or
- B. have been referred to the Union, as soon as the department learns of this action.

The purpose of this notification is to insure that issues which may affect more than one department are handled in a uniform manner, and that the resolution of a problem does not conflict with any law, regulation, policy or the provisions of a collective bargaining agreement.

116.0 DISCIPLINARY PROCEDURES - GENERAL

The purpose of disciplinary action is to rehabilitate an employee who is not performing satisfactorily. The selection and training process is very expensive and it is to the advantage of both the County and the employee to correct behavior before serious problems develop. Most incidents can be resolved by bringing the problem to the employee's attention, but in some cases, stronger sanctions become necessary. This section outlines the process to be taken in dealing with these more serious infractions.

Formal disciplinary action will normally take the form of:

- A. a letter of reprimand,
- B. a suspension with or without pay,
- C. a demotion, or
- D. termination of employment.

The choice of which sanction to impose depends largely on the seriousness of the violation, although in the case of an employee who continually violates work rules, imposition of more serious sanctions for second or third infractions may become necessary.

116.1 INVESTIGATION OF THE INCIDENT

When an incident occurs which appears to call for formal disciplinary action, the department head shall be notified immediately. In serious cases, where a suspension or termination is likely, department heads, or their authorized subordinate, may immediately suspend an employee, with pay, while the matter is being investigated.

The Personnel Director and Civil Deputy Prosecutor shall be consulted as soon as possible in all suspension or termination cases before any action (other than immediate suspension) is taken with regard to the incident.

Inquiries shall be made to determine who witnessed the incident, what physical evidence is available, if any, and what the facts surrounding the incident are. If the incident is of a criminal nature, the police or the sheriff's office should be notified immediately.

Once sufficient information has been gathered, preferably in writing, the employee must be confronted and asked for his or her explanation. Employees should be advised that they have a duty to the employer to tell the truth concerning the incident, and that lying about a work related violation may, in itself, be cause for dismissal. This meeting is investigatory only, and must not result in disciplinary action being taken immediately.

116.2 LETTER OF REPRIMAND

After an investigation of the incident, the employee's explanation and an evaluation of the facts, have been made by the department head, the department head may decide that a letter of reprimand is an appropriate disciplinary action to be taken. Personnel and the Chief Civil Deputy shall be consulted prior to serving the letter on the employee.

The letter of reprimand should summarize the violation briefly, advise the individual that their behavior is not acceptable and will not be tolerated in the future. Depending upon the circumstances, the individual may be advised that future incidents may result in a suspension or termination.

The original letter shall be given to the individual, a copy sent to the Personnel Department to be placed in the individual's personnel file, and at least one copy retained by the department. If the employee is represented by a union, a copy of the letter shall be forwarded to the union. The letter shall be signed by the employee indicating only that he/she has received it.

116.3 SUSPENSION/TERMINATION - GENERAL

In the event the department head believes that a suspension or a termination should be imposed for the violation, the Personnel Director and Civil Deputy Prosecutor shall be consulted prior to any notification to the employee. A "reasonable period" of disciplinary suspension shall be determined on a case-by-case basis by the department head. The following factors shall be taken into consideration when the length of suspension is being determined:

- A. The particular cause or reason for the suspension;
- B. Prior conduct and service record of the employee;
- C. The necessity and purpose of the suspension and the desired objectives to be attained by such discipline;
- D. The best interests of the County and its personnel;
- E. All other factors which may be pertinent in the particular case.

These same factors shall be examined when considering the termination of an individual.

116.4 SUSPENSION/TERMINATION - NOTICE

- A. The termination or disciplinary suspension without pay of an employee by a department head shall be accomplished only:

1. By serving upon such employee, either personally or by mail, a copy of the written notice of such suspension or termination.
 2. Filing such notice, together with evidence of such service, with the Personnel Director.
- B. A notice of disciplinary suspension or termination shall be in a form prescribed by the Personnel Department and the Prosecutor's office, shall be dated and signed by the department head and shall set forth:
1. the name, classification, department, rank, and status of the employee;
 2. the time and duration of any suspension;
 3. the reason or reasons for a suspension or termination.
- C. A copy of the notice of suspension or termination shall be forwarded to the union which represents the employee.
- D. The dates of any suspension or termination shall be set at least three working days later than the notice of suspension so that the employee and the union have an opportunity to review the notice and, at their option, file a grievance under their respective collective bargaining agreement.
- E. The dates of the suspension may be set to minimize its effect on departmental operations.
- F. Subparagraph D. above does not preclude relieving an employee of duties immediately because of the emergency nature of the violation. In the event of an emergency suspension of duty, the Personnel Director, and the union must be notified as quickly as is reasonably possible.

116.5 DEMOTION

- A. Demotion may be called for under certain circumstances, primarily where a person in a position of authority has abused that authority or committed a serious violation of some sort related to the authority of the position.

As with other forms of disciplinary action, the Personnel Director and the Prosecutor's Office shall be consulted on the proposed action prior to serving any notice on the employee. Notice of Demotion is given in the same manner as for a suspension or termination.

- B. A copy of the notice of demotion shall be forwarded to the union which represents the employee.
- C. The effective date of the demotion should be set at least three working days later than the notice date, so that the employee and the union have a opportunity to review the notice and at their option, file a grievance under their respective collective bargaining agreement.
- D. The delay in implementation of the demotion contained in the notice does not preclude the department head relieving the individual of the duties of the position immediately.
- E. In the case of a demotion, the pay of the individual drops to the lower Range on the effective date of demotion.

117.0 SELECTION PROCEDURES

- A. ENTRY LEVEL POSITIONS: Entry level positions shall be open to any individual who wishes to apply. The Personnel Department shall insure that positions are advertised in one or more newspapers for at least three days in addition to other dissemination methods, and that applications are accepted for at least five working days. The selection process shall conform to Affirmative Action and Equal Employment Opportunity Commission (EEOC) requirements.
- B. PROMOTIONAL POSITIONS: Vacancies in union positions shall be filled by first opening the job to qualified individuals currently employed in the Department. Notice of intent to fill a vacancy shall be published within the department for at least three days. The conditions of applicable collective bargaining agreements must be met. If no satisfactory applicant applies, the position shall be advertised to the general public as outlined in Paragraph A.

C. EXEMPT POSITIONS:

1. In order to promote morale and encourage personal development on the part of employees, as well as insure the recruitment of the best qualified individuals, exempt vacancies may be filled by the department head from among qualified members from the department.

2. If the department head chooses, the vacancy shall be opened to the public for applications as described in Paragraph A. above.

D. DEPARTMENT HEADS: Vacancies in department head positions shall be filled through open competition in order to find the best qualified individual. The Personnel Department shall insure that positions are advertised in one or more newspapers for at least three days in addition to other dissemination methods, and that applications are accepted for at least five working days. The Selection Board shall be convened by the Personnel Director to screen and recommend not less than three names to the County Executive as finalists for the position. The County Executive shall not be a member of a Selection board convened to screen and recommend department head applicants.

E. CURRENT JOB DESCRIPTION REQUIRED:

1. No vacancy shall be filled in any department unless or until a current job description, approved by the Personnel Director, exists.

2. Applicants for vacant positions must, in the opinion of the Selection Board, meet the minimum qualifications for the job. In the event no applicant meets the minimum qualifications for the job, the vacancy shall be re-advertised. Provided that if the department head chooses, he/she may appoint the most qualified of the applicants as a "Trainee" in the position vacancy. The compensation for an employee in trainee status shall be negotiated with the individual or in the case of a bargaining unit employee, with the union. In each case in which the training period extends beyond the normal probation period established by a union contract, written agreement of the union extending the probation period must be obtained before the individual is hired.

F. SELECTION OF APPLICANT:

1. **THE SELECTION BOARD:** The Selection Board shall normally consist of not less than three members and shall:
 - a. Except when the department head is being selected, include a representative of the department in which the vacancy exists, appointed by the department in which the vacancy exists, (appointed by the department head, but not the department head him/herself);
 - b. Include a representative of the Personnel Department;
 - c. Include one or more members selected at large. At large members shall be appointed by the Personnel Director with the concurrence of the department head, provided that in the case of position vacancies in Range 5 or less, no at large member need be appointed.
2. **WHEN A BOARD IS TO BE CONVENED:** A board shall be convened to screen applicants for all vacancies except for promotional and exempt vacancies, other than department head vacancies, when more than four applications are received from basically qualified individuals from within the department for a promotional vacancy within that department.
3. **THE SCREENING PROCESS:** Applications for a position except positions excluded by the Whatcom County Charter shall be reviewed by the Board and evaluated on the basis of education, experience, training and general qualifications for the vacancy. If less than three individuals apply for a position, or none of the applicants has satisfactory qualifications, the position may be re-advertised.

- a. The three top candidates selected from among those interviewed shall be recommended to the department head for appointment. In the event the department head finds none of the three acceptable, more applicants shall be interviewed until a second three qualified candidates are found for recommendation. If no satisfactory candidate is found among the six candidates recommended, the position may be readvertised.
 4. Applications of unsuccessful applicants for a class shall be kept on file during the next six month period and shall be considered for other vacancies in that same or similar classes. Provided that where 100 or more applications are received for a particular vacancy, applications shall be kept on file during the next one year period and shall be considered for other vacancies in that classification. Vacancies which occur during these periods, for classifications for which current applications are on file, need not be re-advertised. Instead, selection may be made from those on file. If fewer than three applications are on file, the position shall be readvertised. Additional unsolicited applications may be added to the file during the six month/one year period, but all applications must be renewed at the end of the six-month/one year period. The six month/one year period begins with the date of appointment from the list to fill the advertised vacancy.
 5. Short term seasonal or part time positions are normally not subject to the selection process. However, in certain positions it is to the advantage of a department to employ persons on a part-time basis as a way of screening individuals for future full-time employment. For this type of position, applicants for part-time positions may be screened in the same manner as full time employees. If part-time employees have been appointed after going through the normal screening process, they may be appointed to a full-time vacancy when one occurs within the department.
 6. Former employees who are drawing unemployment during the period a position is vacant may be contacted, and, if qualified for the position, invited to be interviewed as outlined in paragraph 117.0.
- F. 3. THE SCREENING PROCESS, above.

SELECTION PROCEDURES - NOR-BELL CARE CENTER

- A. Vacancies in exempt positions shall be filled in accordance with paragraph C. of 117.0 of these Procedures.
- B. Vacancies in other positions shall be filled in the following manner: Vacancies in non-critical positions, that is, those which do not directly affect patient care to the extent that vacancies must be filled without delay, shall be filled in accordance with paragraph A. of Section 117.0. Notice of a vacancy shall be posted for at least seven days in the Nursing Home so that employees may become aware of the vacancy. If, in the opinion of the Director, no satisfactory applicant applies, the position shall be opened to former employees who may be interested, (see paragraph D, below) or to the general public.
- C. If the open position is one which requires it to be filled as quickly as possible in order to maintain proper staff levels for patient care, the positions may be filled on a temporary basis pending completion of the selection process.
- D. At the discretion of the Director of Nor-Bell, former employees of Nor-Bell Care Center may be re-hired to their former or to a similar position within one year of the date of their termination without being processed through the County's Selection Procedures.
- E. Positions not filled by currently employed individuals or by former employees shall be opened to the public and advertised as outlined in Section 117.0 above.
- F. In the case of positions which are difficult to fill because of the difficulty of attracting applicants, applications may be accepted at any time during the year and drawn upon in the event of a vacancy, provided however, that such a position must be advertised at least twice a year for a period of at least three consecutive days. If more than three applications are on file for such a vacancy a selection board shall be convened to examine and recommend the top three applicants to the appointing official.

118.0 PERSONNEL EVALUATION

118.1 EVALUATION OF PROBATIONERS:

- A. The exact length of probation periods vary with the collective bargaining agreement. Regardless of the length of the period, probationers shall be evaluated at the end of each month of their probation.
- B. At the end of each month, the supervisor shall rate the probationer using the evaluation form and then discuss the rating with the employee. Achievements, as well as discrepancies, should be pointed out. If the employee is not performing well, or up to the standards expected, the supervisor should outline the areas of deficiency and establish realistic goals or objectives the employee is expected to achieve. Failure of the employee to achieve these objectives within the time provided should result in termination of employment.
- C. A record of the discussion and the objectives set shall be made on the form. The employee signs the form indicating the comments and objectives have been reviewed with him/her and understood. They need not agree with the evaluation.
- D. If performance does not improve during the probation period, the employee should be terminated before reaching the end of the period. Any doubt should be resolved in favor of the County. Retaining a marginal or unsatisfactory employee creates a problem which may go on for years. Termination during probation is a relatively simple process.
- E. As with other evaluations, one copy shall be forwarded to the Personnel Department to be placed in the individual's personnel file.

118.2 EVALUATION FOR STEP RAISES

Some collective bargaining agreements require an evaluation form be completed prior to a step raise to specific steps. Raises to Step 4 through 7 of the Inside, Parks, Juvenile, and Public Works contract require evaluations.

Forty-five (45) days prior to the anniversary date of the employee's eligibility to progress to the next step, the department supervisor will conduct an employee performance evaluation. As with probationers, the supervisor shall complete the evaluation form and then discuss it with the employee. If performance does not warrant an increase in pay, the raise should be denied. The requirement in the union contracts for the evaluation to be done forty-five (45) days early is to provide time for the employee to improve performance, if that is necessary.

For individuals covered by the Teamster's contracts which provide a wage increase at the end of probation, a program sheet authorizing a salary boost to Step 1 shall accompany the final probationary evaluation form.

119.0 PROMOTION OR TRANSFER TO A NEW DEPARTMENT - RECALL AFTER LAY-OFF.

119.1 TRANSFERS TO A NEW DEPARTMENT

When an employee applies for a vacancy in, or is transferred to a new department they retain their original hire date for the purposes of vacation accrual and longevity. Unless there is an agreement between the two departments to the contrary, vacation accrued in the first department will be paid off as of the date of termination from that department. Sick leave accrued in the first department will be carried to the new department. The individual begins at the bottom of the seniority list in the new department for lay-off purposes, vacation choice, and promotional opportunities.

119.2 RECALL AFTER LAYOFF

Seniority rights to reinstatement are exclusive to departments covered by the particular contract. For example, employees covered by the "Parks" contract have no right to a vacancy in an "Inside" contract department.

Employees recalled to a new department or to a new position in their former department are subject to a

probation period in the new position. Satisfactory performance in the new position must be demonstrated or the individual may be subject to discharge without cause during the probation period.

An individual who has been laid off and is subsequently recalled to work under contract provisions, will retain seniority as outlined in the applicable collective bargaining agreement. Vacation accrual will be based on his/her original hire date. If sick leave has been cashed out, the remaining 50% (75%) is available to the individual upon returning to work. If she or he terminates her or his employment again for any reason, only the sick leave accrued since the re-hire date is calculated into a second sick leave cash out. If the individual is re-hired after their re-employment rights under the contract have expired, they return to work as a new employee with a new probation period and hire date.

Reinstated employees will be paid at the salary level which has been budgeted for the position to which they are hired, unless their salary before lay off is less than the amount budgeted. In that event, if the new position is in the same pay Range, they will be paid at the rate they earned when they left County employment. If the position is in a different Range, they will be paid at the next highest step above their former step. If they retain their seniority rights, step raises are awarded on their original anniversary date. If the respective twelve or six month period has been exceeded, seniority rights expire, and the former employee begins employment anew at the entry level pay step.

Employees who have been laid-off from the Public Works or Parks Department retain seniority rights for a twelve month period. Inside Contract employees who are reinstated to a position in their original department within the twelve month period guaranteed by the contract, or to a different department within the six month period guaranteed by the contract, retain seniority for these respective periods.

120.0 SAFETY

120.1 WORKER'S COMPENSATION

Whatcom County is self insured for Worker's Compensation. The County's program provides exactly the same benefit as the State Department of Labor and Industries. Employees who are injured on the job are required to report their injury to their immediate supervisor as soon as it is practical to do so. The supervisor must make note of

the date and time of the incident and, if the employee loses work time or requires medical attention, report it to the department head and to the Safety Director immediately. The supervisor must also complete a Supervisor's Report of Accident form and submit it to the Safety Director.

The injured employee must complete a Self Insurance Accident Report (SIF-2) Form for every medically treated injury or illness.

The SIF-2 Form, must be forwarded to the Safety Director within twenty-four (24) hours of the injury.

The attending physician must be told that the illness/injury is an industrial injury and that the County is Self Insured so that s/he may complete the "Physician's Initial Report" and submit it to the Personnel Department.

120.2 COORDINATION OF SICK LEAVE

If an employee suffers a job related illness or injury, and that illness or injury results in time loss from the job, the employee will be paid for that time loss from Whatcom County's Self Insurance Fund. The amount of time loss to be paid the injured worker is based on the information on the SIF-2 Form relating to wage and marital status at the time of the injury. A check for the time loss period will be issued based on the guidelines of the Industrial Insurance Law (Title 52 RCW) and the appropriate Regulations.

The State determines the average wage in the state each fiscal year and adjusts it effective July 1. The state average wage is the maximum salary upon which benefit payments are calculated. The amount of time loss to be paid is based on a percentage of the state average wage. The average County employee's salary is greater than the state average wage,

therefore, it is the policy of the County to coordinate whatever sick leave an injured employee may have accrued with the Industrial Insurance payment. The employee may also use accrued vacation time in order to maintain a full pay check for as long as possible. State law does not permit an employee to receive more money than they would have received had they not been injured. However, vacation is a benefit which the employee has earned through prior service. Therefore, if the employee wishes, he or she may draw both vacation pay and time loss payment without affecting the amount of their time loss payment.

The present Teamsters collective bargaining agreements provide in Article 5.04 that during the period they are off on disability, employees shall utilize their accrued sick and vacation leave. Through this coordination, they may continue to receive their full salary during the period of recuperation. In no case, however, (with the exception of taking vacation time as described above) may the employee receive more money than they would have received had they not become disabled.

Medical costs for work related accidents or illnesses are covered by the Industrial Insurance Plan. The Teamster's Medical or Whatcom Medical Bureau plans will not cover these expenses. Whatcom County is Self Insured for Worker's Compensation. All the medical bills and all time loss payments are paid through the County's Self Insurance program.

When employees receive a time loss check, they have two options.

a) They can buy back a portion of the sick time they may have used during the period of disability by endorsing the check and turning it back to the County; or,

b) They can cash the check and keep the money. However, if they have received full sick leave pay up to the date of the check, the department will have to deduct the amount of the check from the next pay check since under Washington State Law, one cannot be paid more money than one would have earned had one not been disabled.

This policy covers all Whatcom County Employees in the Self Insurance Program including Nor-Bell, but excluding the Ferry. Ferry employees are covered by the Jones Act.

120.3 SEAT BELTS

It is the policy of Whatcom County that seat belts be worn by all drivers and passengers in County vehicles.

120.4 SMOKING

Because smoking has been identified as a health hazard, and because good health has a strong relationship to productivity, it is the policy of Whatcom County to discourage smoking on the part of its employees. Smoking is not permitted in County buildings.

120.5 SAFETY MEETINGS

Each department, or area will appoint or elect an employee to be their safety representative. Departments will hold monthly safety meetings. The safety representative will be the department's representative to the Central Safety and Health Committee. The Central Safety and Health Committee will meet at least quarterly to discuss safety problems and review progress towards correction of safety hazards.

120.6 HAZARDOUS MATERIALS - WORKER'S RIGHT TO KNOW LAW

There are many hazardous materials which are used in the work place. Washington State has enacted a Worker's Right to Know Law which requires employers to identify hazardous materials, to develop procedures for handling them and to train employees in the use of those procedures for handling these substances.

It is Whatcom County's Policy to ensure that the hazards of all chemicals are evaluated and that information concerning their hazards is transmitted to affected employees.

The County has a written Hazardous Materials Program which addresses the requirements of this law. We have embarked on a training program to provide each employee with information on chemicals used in the workplace, how to recognize them and how to deal with them. Each department has a manual entitled CHEMINFO which is available for quick reference to possible hazards in that department.

If you have questions concerning this program, contact your supervisor, the department safety representative, or the Safety Director for information.

121.0 COBRA

The Comprehensive Omnibus Budget Reconciliation Act of 1986 (COBRA) provides a new benefit to employees who retire or otherwise terminate their employment with Whatcom County, provided that their termination was not a result of gross misconduct on their part. This benefit applies to health or medical, dental, and vision coverage. Terminating employees (or their eligible dependents) must self-pay the cost of continued coverage. (See below.)

121.1 CONDITIONS FOR CONTINUED COVERAGE

If your employment terminates for any reason other than your gross misconduct, or, if your hours worked are reduced so that your coverage terminates, you and your covered dependents may continue medical care coverage under the Whatcom Medical Bureau or the Teamster's Plans for up to eighteen (18) months, provided you or your covered dependents are not covered under any other group medical plan. In addition, if you should die, become divorced, or legally separated, or become eligible for Medicare, your covered dependents who are not covered under any other group medical insurance plan may continue coverage under the Plans for up to three (3) years. In addition, your covered children who are not covered under any other group medical plan may continue coverage under the Plans for up to three years from the time they no longer qualify as your covered dependents under the terms of the plan.

121.2 WHEN CONTINUED COVERAGE ENDS

The continued coverage will end for any person when:

(a) the cost of continued coverage is not paid on or before the date it is due.

(b) that person becomes eligible for Medicare; or,

(c) that person becomes covered under another medical care plan; or

(d) the Plan terminates for all employees.

121.3 CONVERSION

Once continued coverage ends for any person, that person may obtain a personal health care policy without evidence of insurability, as provided under the terms of the Plan.

121.4 NOTICES

Notice will be given you when you or your covered dependents become entitled to continued medical coverage under the Plan. You, or they, will then have up to (60) days to elect to continue coverage. Notice will be given you at the time of your exit interview. The carriers, Whatcom Medical Bureau and the Teamster's Trusts will notify you when they receive notice you have left County employment.

121.5 COST OF CONTINUED COVERAGE

Any person who elects to continue coverage under a Plan must pay the full cost of that coverage, plus any additional amounts permitted by law. A 2% administrative fee is presently authorized by law. Contact the Personnel Department to determine current COBRA premium rates for the WMB Plan. Contact the Teamster's Union Office for information on the Teamster's Plans.

121.6 NOR-BELL CARE CENTER

Employees of Nor-Bell Care Center are covered by a different WMB plan, but are entitled to continue on their plan under the same conditions. The Rate Structure is identical with WMB's Community Rated Plan. Dental Plan coverage is optional.

121.7 YOUR RESPONSIBILITIES UNDER THE LAW

If you choose coverage, you must advise the County or the Teamster's Trusts within 60 days of termination that you wish to continue coverage and:

- a) complete a form, requesting continuing coverage.
- b) pay your premium when due.
- c) keep the County or the Trusts advised of your current address,
- d) advise the County or the Trusts if you or your covered dependents become covered by another health care program, including Medicare,
- e) advise the County or the Trusts of any change of status which affects you or your dependent's coverage,

f) advise the County or the Trusts if you and your spouse become divorced or legally separated,

Your spouse must notify us in the event of your death.

122.0 EMPLOYEES WITH LIFE THREATENING ILLNESSES

Whatcom County recognizes that employees with life-threatening illnesses including but not limited to cancer, heart disease, and acquired immune deficiency syndrome (AIDS) may wish to continue to engage in as many of their normal pursuits as their condition allows, including work. These employees have a right to continue to work so long as they are able to meet acceptable performance standards, and medical evidence indicates that their condition is not a threat to themselves or others. Department heads should be sensitive to their condition and ensure that they are treated in a manner consistent with other employees. Employees with handicaps have a right to a working environment free of slurs or harassment because of their protected status.

At the same time, the County has an obligation to provide a safe work environment for all employees and the public. Every precaution should be taken to ensure that an employee's condition does not present a health and/or safety threat to other employees or the public.

Consistent with this concern for employees with life-threatening illnesses and their co-workers, the County offers the following resources through the Personnel Office:

- Education and information concerning terminal illness and concerning specific life-threatening illnesses.
- Referral to agencies and organizations which offer supportive services for life-threatening illnesses.
- Benefit consultation to assist employees in effectively managing health, leave and other benefits.

122.1 GUIDELINES

When dealing with employees with life threatening illnesses, department heads should:

1. Be aware that any medical information which has been provided to management concerning an employee's condition must be kept in strict confidence. Unauthorized release of such information is a breach of State Law.

2. Evaluate the work environment of the ill employee to insure that proper precautions have been taken to protect both the employee and co-workers from the risk of injury or disease. In some cases, ill employees may need to be reassigned to other jobs or have their jobs restructured, so that they can remain employed. Medical documentation may be requested to support requests for job restructuring or reassignment, if necessary.
3. Contact the Safety Director for information and/or training for employees in how the working environment can be kept safe for all.
4. Contact the Safety Director for information concerning the possibilities of contagion.
5. Contact Personnel for advice and assistance in dealing with employee or union concerns over the situation.
6. Remember that these conditions constitute a handicap for which we, by law, must make reasonable accommodation.
7. Remember when dealing with AIDS, that the disease is not transmitted by casual contact.
8. Be sensitive and responsive to co-worker's concerns, and emphasize employee education available through Personnel. Remember that special accommodation is not normally necessary for co-workers even though they may feel threatened by an employee's illness.
9. Remember that the County does not discriminate against persons who have terminal illnesses and that such persons may remain employed providing they are able to meet customary job performance standards without hazard to themselves or to others.
10. Investigate charges that employees suffering from terminal illnesses are being harassed, intimidated, or discriminated against, notifying Personnel and the Prosecutor's Office in cases where disciplinary action is indicated.

122.2 POLICY

Employment policy and benefit plan administration issues involving persons with life-threatening illnesses are to be handled in the same manner as for other employees. Employees, including those with AIDS-related diseases, who wish to work may continue to do so as long as they meet acceptable performance standards and are medically able to do so. Reasonable accommodations will be made for their condition. Information concerning an employee's medical condition must be kept confidential.

122.3 AIDS (ACQUIRED IMMUNE DEFICIENCY SYNDROME)

There has been a great deal of media attention directed to the subject of AIDS. This has heightened concern and in some cases has resulted in undue anxiety in the community as well as in employees who may have contact with AIDS victims.

AIDS is a serious condition caused by a virus called HTLV-III and is characterized by a specific defect in natural immunity against disease. Individuals suffering from AIDS become susceptible to a variety of rare illnesses. The majority of reported cases, however, have been detected in only specific segments of the population.

There is no evidence indicating that the disease may be transmitted through routine contact with AIDS victims or persons in high risk groups.

There have been no reported cases in which the disease has been transmitted by casual or even close daily contact with AIDS patients or persons in high risk groups. For instance, family members other than sex partners of the infected persons have not developed AIDS. There have been no reported cases of ambulance drivers, police and firemen who as a result of assisting AIDS patients have contracted the disease. Such is also the case with doctors and health care personnel. AIDS is spread through intimate sexual contact, blood products and sharing of contaminated needles.

There is no evidence that AIDS is spread through any of the following:

1. Sneezing, coughing or spitting.
2. Handshakes or other non-sexual physical contact.
3. Toilet seats, bathtubs or showers.
4. Various utensils, dishes or linens used by a person with AIDS
5. Articles handled or worn by a person with AIDS.
6. Being around someone with AIDS on a daily basis or over a long period of time.
7. Riding in the same transportation.
8. Eating in the same public places or with an AIDS patient.
9. Working in the same office, shop, etc.

The following procedures are recommended for Deputy Sheriffs, Jail and other concerned employees exposed to or having contact with AIDS patients in the performance of their duties:

1. Wash your hands thoroughly after contact with the AIDS victim, or suspected victim.
2. If you must assist a victim in a manner which may cause blood or other body fluids to be on your hands, wear disposable plastic or rubber gloves. Wash hands thoroughly afterwards.
3. Clean up blood spills and other body fluids with regular household bleach (clorox) diluted 1 part bleach to 9 parts water. Wear gloves during this procedure.

The Health Department

There are three bargaining units representing Health Department employees, a Teamster unit covering the clerical staff, a Washington State Nurses's Association unit covering the nurses, and an International Federation of Professional and Technical Engineer unit covering the Environmental Health staff. Each has it's own salary schedule and benefit plan.

Retirement

Unless they are for some reason ineligible, all County employees contribute a percentage of their wage to one of the retirement systems managed by the State of Washington Department of Retirement Systems. Commissioned officers of the Sheriff's Department are members of the Law Enforcement officers and Firefighter's Pension Fund (LEOFF). All other employees belong to the Public Employee's Retirement System (PERS).

Employees who began government service in a city or county and who were enrolled in either PERS or LEOFF prior to October 1, 1977 are members of Plan I of those systems. Employees who first became employed by a city or county after October 1, 1977 are members of Plan II of that system. The pension benefits of the two plans differ as do the conditions for retirement.

Collective Bargaining Agreements

Unless you are an elected official or are exempt from union membership, you will become part of a collective bargaining unit and represented by one of the unions which represent Whatcom County employees, General Teamster's Local Union #231 represents all employees except two units in the Health Department and the Ferry system employees. Each of the collective bargaining agreements provides detailed provisions which outline the wages, hours and working conditions as well as the benefits to which you are entitled as a County employee represented by that bargaining unit.

Affirmative Action

Whatcom County is an Equal Opportunity Employer. It is committed to the establishment and maintenance of a Personnel System based upon the six merit principles outlined in Section 2 of the Personnel Ordinance. In implementing these standards, it is County policy to ensure that all persons have equal employment opportunity regardless of race, creed, color, sex, marital status, national origin, age, sensory or mental or physical handicap. The Personnel Ordinance, the Policies and Procedures, and the Affirmative Action Plan of the County were adopted in order to attract and retain efficient, effective and productive employees through the adoption of fair, equitable and reasonable procedures for handling personnel matters. The Personnel Ordinance and the Policies and Procedures Manual are part of this booklet. Copies of the Affirmative Action Plan are available from the Personnel Office upon request. A copy has also been forwarded to each department.

Probationary employees will normally be paid at the Entry Step. The employee moves to the next step of the pay plan in accordance with the terms of his/her collective bargaining agreement. Step raises for non-union employees are set by the Un-Represented Employee's Salary Resolution.

In addition to your salary, the County provides fringe benefits which amount to about a 39% addition to salary for the average employee. These benefits include vacation, holiday pay, sick leave, industrial insurance, retirement contribution, health and welfare premiums, social security contribution, and longevity pay.

The following table will assist you to know which health and welfare plan provides coverage for your department, since the package you receive depends upon your bargaining unit contract:

EMPLOYEE BENEFIT PLAN COVERAGE

Carrier	Park Dept	Public Works	Sheriff	Jail	Inside Contract	Juvenile	Non-Union
Whatcom Medical Bureau (includes Drug Plan)			X	X	X	X	X
Teamster's Medical	X	X					
Teamster's Drug Plan	X	X					
Teamster's Vision	X	X	X	X	X	X	X
Teamster's Dental	X	X	X	X	X	X	X
Safeco Life Insurance			X	X	X	X	X
Teamster's Life Ins.	X	X	X	X	X	X	

Ferry Crew

The collective bargaining agreement with the Inlandboatman's Union and the Masters, Mates and Pilots Union provides for a different system of health and welfare benefits. Payment are made by the County to the IBU National Health Benefit Trust on a bi-monthly basis. The Trust covers health and welfare benefits. The salary schedule does not provide step raises.



APPENDIX B

WHATCOM COUNTY
EXECUTIVE ORDER 02-01

Voluntary Unpaid Furloughs

WHEREAS, the County Executive recognizes that due to shrinking revenues and rising costs there is an immediate need to impose restrictions on expenditures from the 2002 budget, and,

WHEREAS, allowing employees to voluntarily request unpaid furloughs will reduce the County's labor costs and, at the same time, provide employees with a new leave option

NOW, THEREFORE, BY VIRTUE OF THE POWER VESTED IN ME BY THE HOME RULE CHARTER FOR WHATCOM COUNTY, I HEREBY ORDER, EFFECTIVE APRIL 16th, IMPLEMENTATION OF THE ATTACHED GUIDELINES FOR "VOLUNTARY UNPAID FURLOUGHS."

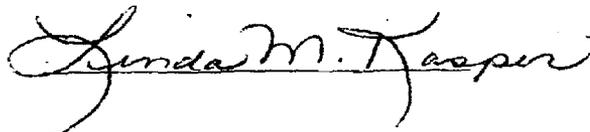
Dated this 16th day of April, 2002.


Pete Kremen, Whatcom County Executive

State of Washington
County of Whatcom

I, Linda Kasper, a notary public, do certify that on this 25th day of September, 2013 that this is a complete and true copy of the original document.





VOLUNTARY UNPAID FURLOUGHS

Effective April 16, 2002

Effective immediately and until further notice, employees may voluntarily request unpaid furloughs.

Employees must request a voluntary unpaid furlough in writing from his or her Department Head. Generally, requests should be made 30 days in advance of the leave. Voluntary unpaid furloughs require mutual agreement between the employee and the Department Head. The Department Head may approve furloughs of up to five days per employee per calendar year. Department Heads will submit furlough requests greater than five days per calendar year to the County Executive following Administrative Policy AD146000A, "Authorizing Special Personnel Policy Provisions or Exceptions."

Voluntary Unpaid Furlough Guidelines:

- Requires advance notice.
- No requirement for employees to exhaust paid leave balances.

Requires written request by employee on a Leave Request form
- Requires mutual agreement between the employee and the Department Head.
- Generally, must be in work week increments, for example, Monday through Friday, five days.
- Department Heads can approve furloughs up to five days per employee per calendar year.
- County Executive or designee approval required for furloughs greater than five days per calendar year.
- Employees must not be in a probationary period
- Employees must continue to meet benefit thresholds.
- Critical work priorities for the County must continue to be met.
- Furloughs must create NO additional labor costs
 - ✓ Extra help hours
 - ✓ Overtime
 - ✓ Out-of-class pay

Calendar for year 2006 (United States)

January						
Su	Mo	Tu	We	Th	Fr	Sa
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May						
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June						
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24	25	26	27	28	29	30
31						

Calendar generated on www.timeanddate.com/calendar

Table 1. The misrepresented "options" in the September 27, 2006 letter (CP 617-619) analyzed under the County's personnel policies

1	"Compassionate Leave" - Unrepresented Resolution Section 6.2.2 (Appendix D, CP 406) A donated paid leave The County should have offered this when there was time to solicit donations back on August 25, 2006 when it was known that Merriman's own accruals/paid leaves would not cover the six weeks requested. The letter stated medical documentation was required.
2	"Non-Disability Leave" - Employee Handbook section 113.1 (Appendix E, CP 454) has an 89 day limitation and subsequent mandatory termination. Merriman would lose all protections of the ADA/WLAD under this "option". The County wouldn't have had to apply an accommodation analysis at the end of the 89 days in lieu of termination.
3	"Disability Leave Request - per the Unrepresented Resolution (section 8.1.1)" – This is "Benefits Coverage In Case of Documented Extended Illness or Injury" and is not a leave provision. (Appendix D, CP 408)
4	"Long-Term Disability" - Unrepresented Resolution 8.3.5 (Appendix D, CP 410) Refers to an employee paid long term disability insurance program. This is not a leave program. It is a way to move Merriman off the payroll rather than a way to retain him.

Table 2. Misrepresented "Options" in the October 5, 2006 letter (CP 620) analyzed under the County's personnel policies

	"A generous sick leave program that allows employees to utilize vacation and other accrued time off" - This is Unrepresented Resolution 6.9 (Appendix D, CP 407) with its unpaid leave provision omitted. According to her (CP 617) and Keeley (CP 606) Merriman had consumed all accrued/paid time off by September 22, 2006.
	"Full benefits under the Family/Medical Leave Act" - This is Section 6.7 of the Unrepresented Resolution (Appendix D, CP 407) The full 12 week FMLA yearly allotment had been fully consumed. (CP 617)
	"Furloughs and in situations where specific criteria is met" - Executive Order 02-01 (Appendix F) The specific criteria are that "Furloughs must create NO additional labor costs" listing extra help hours, overtime and out-of-class pay as examples of additional labor costs a furlough can't create. Extra help hours and out-of-class pay costs were generated for Merriman to be on leave because he was a supervisor therefore he was ineligible for furloughs.
	"Donation of sick leave from other employees" - This is Section 6.1.7 of the Unrepresented Resolution "Sick Leave Sharing." (Appendix D, CP 405) Donated paid leave should have been offered when there was time to solicit donations on August 25, 2006 when it was known that Merriman's own accruals/paid leaves would not cover the six weeks requested. Medical documentation was required.