



# Employee Handbook 2021



# *City of Belen Personnel Policy*

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**Section 3.** Title 2.28 ("Personnel System") of the City Code is re-enacted with amendments, to read as follows:

**2.28.04.010: SCOPE:**

The provisions of this Ordinance are meant to define the duties of the Mayor, the City Council and the City Manager relative to the rules and regulations setting forth appointment, nomination, confirmation, hiring and discharging of employees and the supervision and management of the personnel system to be used by all departments of the City of Belen.

This Ordinance does not apply to the City Manager, Fire Chief, Police Chief, members of boards and commissions, contractors, including persons engaged under contract to supply professional or technical services, and volunteer personnel appointed or designated by the Mayor or Council.

Notwithstanding Chapter 1.12(General Penalty) of the City Code, there shall be no penalty for violation of Title 2.28 of the City Code.

**2.28.04.020: GENERAL PROVISIONS:**

A. Purpose.

1. The City of Belen Personnel Policy provides a uniform system of personnel administration and management and is intended to provide information governing the policies and practices for working conditions, workplace expectations, and employee benefits affecting employment with the City.
2. The provisions of this Personnel Policy become effective upon the effective date of this Ordinance.
3. For employees within the applicable bargaining unit, this Personnel Policy is subject to The City of Belen Collective Bargaining Agreement (CBA) with the American Federation of State, County, and Municipal Employees, Council 18, City of Belen Public Employees Local (513), and any mutually adopted amendments thereto.

B. Chain of Command.

1. The Mayor is the Chief Executive Officer (CEO) of the City as a municipal corporation organized under the laws of the State of New Mexico. As such, the Mayor has the responsibilities established in NMSA 1978, Sections 3-11-4, 3-11-5, and 3-11-6, and is thereby charged by Law with the supervision, operation and daily management of the City, through the City Manager. The City Manager is under the direct supervision of the Mayor and shall directly supervise employees of the City and be responsible for the effective management of the administrative affairs of the City. Any employee with issues or concerns regarding their employment with the City shall first attempt to resolve those issues at the lowest level of supervision before addressing their concerns with their department supervisor, superintendent and/or director.

2. Under the general supervision of the Mayor, the City Manager shall supervise all aspects of the personnel system and terms of the City of Belen Personnel Policy, including but not limited to the authority to hire and terminate. The Human Resources Director shall assist the City Manager in the implementation of these functions as they relate to the daily personnel operations of the City and shall cause to be performed the administrative and technical personnel activities of the City in order to ensure legal and statutory compliance by the City with the provisions of this Personnel Policy, any negotiated and binding Collective Bargaining Agreement (CBA), and the personnel and labor related laws of the State of New Mexico, the United States and applicable funding sources or contracts the City enters into agreements with.
3. All employees will adhere to and comply with the policies and procedures herein established for all personnel matters.
4. Municipal Court Employees, consistent with State Law, serve at the will of the City's Municipal Court Judge and are hired, supervised, disciplined and terminated from employment solely at the Municipal Judge's discretion, subject only to state and federal laws. Municipal Court employees shall receive the same terms of compensation and benefits, including travel allowances under the Per Diem and Mileage Act, as are provided all City of Belen full-time classified employees, and as may be provided for by City adopted law, ordinance, or City policy, if applicable.

#### C. Amendment of Policy.

Definite rules and regulations cannot be readily formulated for every possible problem, circumstance or situation. Therefore, the need may arise and the City reserves the right to revise, supplement, or rescind any policies or portion of the City Personnel Policy from time to time as it deems appropriate, by approval of the City Council and upon written notification of all affected employees.

#### D. Equal Employment Opportunity (EEO) Policy.

The City of Belen is an equal opportunity employer and does not practice nor tolerate unlawful discrimination, whether on the basis of race, color, national origin, religion, age, sex, ancestry, physical or mental handicap, serious medical condition, sexual orientation, spousal affiliation, or gender identity in the consideration of an individual for employment, duration of employment, compensation, terms, conditions, or privileges of employment.

The City of Belen will make reasonable accommodations for qualified individuals with known disabilities when those disabilities are disclosed by the employee, unless doing so would result in an undue hardship to the extent required by law. This policy governs all aspects of employment, including but not limited to, recruitment, selection, job assignment, compensation, discipline, termination, and access to benefits and training.

It is the responsibility of the employee to disclose any physical or other disabilities or status as a protected class if necessary at the time of employment that the employee or prospective employee believes may need reasonable accommodation in order to perform the expected functions of the prospective position, or at the time the employee becomes aware of the disability or protected status in order that the employer make such reasonable accommodations.

Any employee with concerns or issues about any type of discrimination and/or retaliation in the workplace shall bring these issues to the attention of their immediate Supervisor/Department Director and/or the Human Resources Department as soon as they occur so that they may be appropriately investigated, documented and corrected. The provisions of this adopted Personnel Policy and any other applicable provisions of federal and state law guarantee employees of the City of Belen guaranteed that they could raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination or reprisal against an employee for reporting discrimination prohibited under this Policy will be subject to disciplinary action by the City, up to and including termination of employment.

E. Saving Clause/Severability.

A determination by a court of competent jurisdiction that any provision of the City Personnel Policy is unconstitutional or invalid shall not adversely affect the constitutionality, validity or enforceability of the remaining provisions.

**2.28.04.030: PERSONNEL PRINCIPLES:**

The principles of the system of personnel administration are as follows:

- A. Recruiting and selecting employees will be on the basis of their ability, knowledge and skills including consideration of qualified applicants for initial employment;
- B. Reclassification of employees will be based on their job performance as measured by their ability, knowledge and skills;
- C. Employees will be considered for promotional openings based on their history of job performance, experience, meeting qualifications for the position, including relevant licensing, certifications, training, education and other applicable credentials toward meeting the job specifications, and a demonstrated record of accomplishment of initiative, creativity, leadership and commitment toward their department and City goals.
- D. The continued employment of City employees shall be based on reasonable standards of job performance and personal and professional conduct. Failure or refusal to meet these standards shall constitute just cause for disciplinary action including oral or written reprimand, suspension, demotion and termination. Disciplinary action is not primarily intended to be punitive, but rather to maintain the efficiency and integrity of City service.
- E. Employees and applicants will be assured fair treatment in all aspects of personnel administration in accordance with federal and state laws. Employees will be protected against coercion for political purposes and will be prohibited from using their official authority for interfering with or affecting the results of an election or a nomination for office.

**2.28.04.040: INTERPRETATION OF MATTERS NOT COVERED:**

The City Manager may issue such regulations or policy or memorandum as are necessary to implement the provisions of the Personnel Policy or of this Ordinance.

**2.28.04.050: DISTRIBUTION OF PERSONNEL RULES AND REGULATIONS**

Copies of the Personnel Policy, the rules and regulations, and all amendments thereto shall be issued to all applicable employees. Directors shall maintain a copy in their respective departments. New employees shall be given a copy of the Personnel Policy and the rules and regulations at the time of their orientation and whenever the Personnel Policy is updated. Additionally, employees shall have access to the most recently adopted City Personnel Policy during regular office hours in the Human Resources Department and on-line through the City Shared Drive and the Government/City Ordinances of the City website. Each employee shall be required to sign a form acknowledging they have received a copy of the Personnel Policy and that they both understand and will comply with all the provisions herein.

**2.28.04.060: APPOINTMENT AND TERMINATION OF OFFICIALS AND EMPLOYEES**

- A. Pursuant to NMSA 1978, Section 3-11-6 (1965), and subject to the approval of a majority of the members of the governing body, the Mayor shall appoint all officers and employees except those holding elective office, those subject to the personnel system described in this Ordinance, and those subject to the provisions of any Collective Bargaining Agreement (CBA).
- B. The City Manager, under the general supervision of the Mayor, shall be delegated the responsibility to supervise and administer the personnel system of the City and applicable Collective Bargaining Agreement (CBA), and may sub-delegate any or all of the responsibilities to the Human Resources Director.
- C. Any Appointed Officer or employee appointed by the Mayor who is terminated shall, upon request, be given by the Mayor in writing, a list of reasons for their termination, and be paid any compensation which the Officer or employee has accrued to their date of termination.
- D. All employees are subject to a reduction in force adopted by the governing body.

## **2.28.04.070: EMPLOYMENT RECORDS:**

A. The City of Belen shall establish upon hire and maintain throughout employment and retain as required by law a personnel file record of each employee's employment history in accordance with operational necessity and applicable state and federal law requirements. Personnel files are the property of the City of Belen and access to the information they contain is restricted. Employees shall have access to their own file upon written request and should contact the Human Resources Department with reasonable notice to review their file in the presence of a Human Resources Department employee. Employees who review their personnel file will be required to sign a request form and list any documents they request copies of for their records. No original records may be removed from the file. No personnel files may be removed from the Human Resources offices except by authorized employees. Employees may submit written rebuttal to any material placed in their employment history. Employment-related confidential records (See Section C. below) shall be available for inspection by others only when the employee provides written permission for the release of those records, specifying that individual or entity, or pursuant to a lawful court order.

B. Employment records that are not confidential records (See Section C. below) are subject to inspection by the public.

C. For the purpose of inspection of public records under state or federal law, the following material shall be regarded as confidential and exempted from public inspection: records and documentation pertaining to physical or mental illness, injury or examinations; personal leave and medical treatment of persons; records and documentation maintained for purposes of the Americans with Disabilities Act [42 U.S.C. Section 12010 et seq.]; letters of reference concerning employment, licensing, or permits; records and documentation containing matters of opinion; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed;; military discharge; information on the race, color, religion, sexual orientation, national origin, political affiliation, age, and disability of employees; home address and personal telephone number; social security number; laboratory reports or test results; and as otherwise provided by state or federal law including but not limited to information protected under Attorney-client privileged information and/or work product.

D. It is the responsibility of each employee to promptly notify the City of Belen Human Resources Department of any changes in personal data. Personal mailing addresses, telephone numbers, names and numbers of dependents/beneficiaries, persons to be contacted in the event of an emergency, educational certifications and other such information should be accurate and current at all times. If any personal data has changed, the employee is required to notify the Human Resources Department not later than fourteen (14) days from the change.



**CHAPTER 2.28.08  
DEFINITIONS OF WORDS AND TERMS**

**2.28.08.010: DEFINITIONS OF WORDS AND TERMS:**

As used in this title and as used in the Personnel Policy:

**ADMINISTRATIVE LEAVE:** Paid leave approved at the discretion of the City Manager. Administrative leave allows the employee to be away from work without losing any work related benefits.

**ANNUAL LEAVE:** See definition of Personal Leave.

**APPEAL:** A written, formal complaint by an employee based on an alleged impropriety in the administration of discipline.

**APPLICANT:** An individual who has filed an application and desires to be considered for appointment to a position in the City service.

**APPOINTED OFFICER:** Pursuant to NMSA 1978, Section 3-11-6(A), an appointed officer is the City Manager, Chief of Police, Fire Chief, and City Clerk. These officers are appointed by the Mayor and approved by the majority of all members of the governing body. Any person holding an appointed office at the time of the municipal election shall continue in that office until their successor has been appointed and is qualified.

**APPOINTMENT:** The action for employment in which an employee is appointed to fill a position.

**BENEFIT:** Anything that furthers a person's financial interest or from which a person hopes to gain in any way.

**BONA FIDE OCCUPATIONAL QUALIFICATIONS (BFOQ):** A qualification reasonably related to the satisfactory performance of the duties of a job, and for which there is a factual basis for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety or efficiency.

**CALL BACK:** Occurs when an employee is on scheduled time off (excluding lunch breaks) and is unexpectedly notified to return to work. The order to return to work is due to an unexpected event beyond control of management and normally results in an increase to the scheduled number of employees on duty and an increase in the number of hours worked by the employee subject to the call back. It is not one employee replacing another scheduled employee.

**CAUSE:** Motive or reason for discipline of a regular employee determined by the standards of job performance and maintenance of the public interest.

**CERTIFICATION:** Referral by the personnel department to an appointing authority the names of candidates on a list of eligibility for making an appointment to any position.

**CLASSIFICATION:** A job that is occupationally and quantifiably distinct.

**CLASSIFICATION PLAN:** A document that describes the City's employment structure for classified employees and is the foundation for ensuring consistent application of the philosophy.

**CLASSIFICATION PROCESS:** Research and analysis based on comparative duties, responsibilities and qualifications by which appropriate classifications are determined.

**CLASSIFIED EMPLOYEE POSITION:** A job, which requires a regularly assigned combination of duties to be performed by an employee in the City and is a position other than as a temporary, term, or an Appointed Officer.

**COMPENSATORY TIME:** Hours granted to employees covered by the fair labor standards act in lieu of overtime pay, on the basis of one and one-half (1<sup>1</sup>/<sub>2</sub>) hours compensatory time for each hour of overtime.

**CONFIDENTIAL:** Work related communication that is not intended to be disclosed to other persons other than those who are authorized to access to

**CORRECTIVE ACTION:** Oral or written warnings or written reprimands.

**DEMOTION:** The assignment of an employee from one class to another, which has a lower maximum rate of pay (also called downgrade and reclassification).

**DEPARTMENT:** The administrative grouping of divisions or sections, as specified by the current City organizational chart as adopted by the governing body.

**DISABILITY:** A physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

**DISABLED PERSON:** Anyone who has a medically documented physical or mental impairment, which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. "Life activities" are those that affect employability; "substantially limits" means that a person is likely to have difficulty getting, keeping, or advancing in a job because of an impairment.

**DISCIPLINARY ACTION:** Action taken by management with regard to any employee, including but not limited to reprimand (oral or written), suspension, demotion or termination

**DISPUTE:** An expression of dissatisfaction and a request for a review by an employee of a possible violation of City personnel rules and regulations.

**DRESS CODE:** Employees' requirements appropriate for the work place as determined by administrative regulation.

**FAIR LABOR STANDARDS ACT (FLSA):** The federal law which sets minimum wage, overtime pay, and equal pay, recordkeeping, and child labor standards for employees who are covered by the act.

**FAMILY MEDICAL LEAVE ACT (FMLA):** The act enacted by congress effective August 5, 1993, and requires covered employers to provide eligible employees up to twelve (12) weeks of unpaid leave in a twelve (12) month period to care for a newborn or newly placed adopted or foster child, to care for a seriously ill child, spouse or parent; or because of the employee's own illness. Changes to the ACT include provisions for service members and their families.

**FINANCIAL INTEREST:** Any property ownership, management, professional or private interest from which the employee (or family or household member) receives a financial benefit.

**FRINGE BENEFITS:** An employment benefit (such as a pension, a paid holiday, or health insurance) granted or offered by the City that involves a monetary cost without affecting basic wage rates granted.

**GRIEVANCE:** A written formal complaint by an employee alleging a violation of a City rule or regulation.

**IMMEDIATE FAMILY MEMBER:** Also referred to as "relatives" are any persons who are related by blood or marriage to include spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, great-grandparent and cousins.

**INSUBORDINATION:** An employee is insubordinate when refusing to carry out a reasonable and legitimate work-related order. It is not insubordination to refuse to carry out an illegal act, or violate the provisions for Employee Conduct contained in Chapter 2.28.120 of this Personnel Policy.

**JOB DESCRIPTION:** The definition of responsibilities an employee is to perform in an appointed position. The description shall include the position title, classification, supervision, process, nature of position, description of task performed, description of tools, machines, and work aids used, qualifications, physical requirements and general working conditions.

**JOB RECLASSIFICATION:** The process of analysis by which an established position is reviewed to determine whether the duties and responsibilities of that position merit a change in class designation.

**JOB VACANCY:** A budgeted position for which funds are allocated but which is not occupied.

**LEAVE WITH PAY:** An authorized paid absence from regularly scheduled work hours for reasons specified in the personnel rules. The City Manager must approve leave with pay.

**LEAVE WITHOUT PAY:** A temporary non-pay status and absence from duty that, in most cases, is granted at the employee's request. This may include family medical leave, unauthorized leave or leave of absence. Leave without the City Manager must approve pay.

**MANAGER:** The City Manager.

**OFFICE:** The Human Resources Director's office.

PERSONAL DAY: See definition of Personal Leave.

PERFORMANCE EVALUATIONS: A periodic assessment of an employee's work, based on quantifiable goals for performance completed by the employee's supervisor. (Also referred to as performance appraisals).

PERSONAL LEAVE: A benefit earned, with pay, granted to a classified or qualified unclassified employee after accrual at a specific rate to be used by an employee with approval from management.

Personal Leave includes Annual Leave, Sick Leave, and a Personal Day.

RECLASSIFICATION: The promotion, demotion or lateral change in job assignment or position.

RECRUITMENT: The process of soliciting applications from the general public and current employees for vacant positions.

REFERENCE CHECK: The process employed by the City for verification of both the education and employment history information provided by an external job applicant.

RETALIATION: An action taken by an employer against an employee for adverse action taken by an employer against a person because of that person exercising protected constitutional or statutory rights.

SICK LEAVE: See definition of Personal Leave.

SUSPENSION: An involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days.

TERMINATION: The involuntary dismissal of an employee from employment with the City of Belen.

**CHAPTER 2.28.69  
EMPLOYMENT STATUS**

**2.28.69.010:  
PURPOSE:**

The City of Belen will develop and maintain a classification plan and employment categories for all City of Belen positions. The City will have a job description for each position in the classification plan. Job descriptions shall include a position title, the specific designation of Exempt or Nonexempt under the Fair Labor Standards Act (FLSA), essential tasks, duties, responsibilities and minimum qualifications. The job descriptions will also specify knowledge, skills, abilities, education, experience, physical requirements, and working conditions required of applicants and shall meet all State and Federal legal requirements. These employment classifications do not guarantee employment for any specified period or continued employment with the City.

**2.28.69.020: PROCEDURE FOR EMPLOYMENT STATUS CHANGES:**

All employment status changes (change in category of employment, such as, from part-time to full time status, from probationary to classified status, pay changes, etc.) shall be documented in writing on a Personnel Change Form filled out by the Department Director who will forward it to the Finance Director and City Manager for approval signatures. The City Manager will forward the approved Personnel Change Form to the Human Resources Department for processing and transmittal to the Finance Department for implementation on the designated effective pay period.

**2.28.69.030: PROBATIONARY PERIOD:**

- A. The successful completion of a probationary period of six (6) months is required of all newly hired employees (full-time or part-time). The purpose of the probationary period is to give new employees the opportunity to demonstrate their ability to achieve a satisfactory level of work performance and to determine whether the new position meets their expectations. The City uses this period to evaluate the employee's skills, knowledge, ability, work habits/behavior, and overall performance. A probationary employee accrues Personal Leave and is entitled to specific full-time or part-time benefits and: 1) serves at the convenience and will of the City; 2) is subject to termination of employment at any time; and 3) cannot grieve or dispute employment decisions.
- B. Current employees who receive a promotion, changes in classified status, or any other employment status changes shall complete a probationary period of ninety (90) days.
- C. If the probationary employee successfully completes the probationary period, the Department Director will recommend with a Personnel Change Form that the employee become a Classified Employee (full-time or part-time), pursuant to Chapter 2.28.69.020 Procedures for Employment Status Changes.
- D. A break in employment of at least one work day or more, without written City approval in advance, will require an unclassified/probationary employee to serve another probationary period upon rehire, with the exception of those employees returned to work under Return from Reduction in Force, Re-employment of Job-Related Injury, or Ill Former Employees provisions of the Personnel Policy.

- E. Any approved full-time continuous leave, except for military leave, taken during the probationary period, which exceeds thirty (30) calendar days shall extend the probationary period by the same number of days the leave exceeds the thirty (30) calendar days. The City at its own discretion may extend probationary period.

**2.28.69.040: ACKNOWLEDGEMENT OF CONDITIONS OF EMPLOYMENT:**

All employees upon hire or change in employment status shall sign a Letter of Appointment acknowledging their understanding of the terms and conditions of the employment appointment with the City and shall also read and sign the job description for the position. These documents shall become part of the employee's personnel file. Failure by the employee to provide such an acknowledgement given to the employee by the City may be grounds for termination. Failure by the employee to provide or by the City to obtain such an acknowledgement shall not alter the terms and conditions of the employee's appointment.

**2.28.69.050: CATEGORIES OF EMPLOYMENT:**

- A. Appointed Officer.

The City Manager, Chief of Police, Fire Chief, and City Clerk who are nominated by the Mayor and their nomination is confirmed or reconfirmed by the governing body at the organizational meeting. Any person holding an appointed office at the time of the municipal election shall continue in that office until their successor has been appointed.

- B. Department Director.

A classified, non-appointed, employee who is exempt under the Fair Labor Standards Act (FLSA) and is designated with responsibility for the operation and management of a designated department of the City government.

- C. Unclassified Employees.

Unclassified employees are exempt under the Fair Labor Standards Act (FLSA) and are terminable-at-will. Unclassified positions will be filled only after the positions have been properly advertised, applications screened, and qualified applicants interviewed.

- D. Full-Time Classified Employees.

A full-time classified employee is one who has successfully completed the probationary period and works at forty (40) hours in each City designated workweek (7-day period) or at least 80 hours in each 14-day work period. Full-time employees are required to participate in the Public Employees Retirement Association of New Mexico (PERA) retirement plan and are eligible for full benefits, including Personal Leave and medical coverage.

E. Part-Time Classified Employee.

A part-time classified employee is one who has successfully completed the probationary period and who works more than nineteen (19) hours a work week, but less than forty (40) hours in each City designated work week (7-day period). Part-time employees are required to participate in the Public Employees Retirement Association of New Mexico (PERA) retirement plan and are subject to partial fringe benefits. Part-time employees, who regularly work nineteen (19) hours or less in a 40 hour scheduled workweek or thirty-eight (38) hours or fewer in an 80-hour pay period may file for an exclusion from PERA membership. The exclusion form must be filed with PERA within thirty (30) calendar days of an employee's hire, job change or change to part-time, temporary or seasonal employee position.

F. Probationary Employee.

A probationary employee is a full-time or part-time employee who has not yet successfully completed the mandatory six (6) month probationary period, pursuant to Chapter 2.28.69.030 of this Personnel Policy, except that non-certified police officers must complete an eighteen (18) calendar months' probationary period. A probationary employee accumulates leave and benefits as any other employee, according to their part-time, full-time or other assigned status.

G. Temporary Employee.

1. A temporary employee is any employee hired by the City on either a full-time or part-time basis to fill a position that has been established to meet a need for a specific period of time, such as seasonal work or on specific short-term projects, sometimes grant-funded. Temporary employment will normally be for a period of not more than six (6) months and may be extended up to three (3) additional months, for a total period of time not to exceed 9 months by recommendation of the responsible Department Director and approval of the City Manager. A temporary employee's employment status is at-will, subject to the needs of the City, and subject to termination at any time with or without cause and without right of appeal or hearing at any time. Temporary employees do not receive City benefits, do not accrue personal leave and may not grieve or dispute employment decisions.
2. The City Manager may authorize the hire of a temporary employee on an emergency basis without competition, pursuant to and consistent with the provisions of Chapter 2.28.69.050 (I) Emergency Appointment of the City of Belen Personnel Policy.
3. At the successful completion of their temporary assignment and upon the request of the Department Director and approval of the City Manager, Human Resources and Finance Departments, a temporary employee may apply for or be converted to a classified position, should a permanent opening exist, and shall be credited with time of service towards completion of the probationary period at the time of the conversion from temporary status to classified status, if the title and responsibilities are similar in nature, or with the concurrence of the above managers.

H. Acting Status Employee.

1. A non-competitive appointment of an employee to temporarily assume the duties and responsibilities of a vacant position within the City pending selection of a qualified person to fill the vacancy, not to exceed six (6) months. The appointment shall be by written recommendation of the responsible Department Director and approval of the City Manager or, in the absence of a City Manager, the Mayor. The City Manager shall appoint acting Department Director positions until filled but not to exceed six (6) months and the Mayor shall appoint an acting City Manager until filled, but not to exceed six (6) months. The acting status appointment may be extended up to three (3) additional months pending selection of a qualified person to fill the vacancy by written recommendation and concurrence of the Department Director, City Manager or Mayor, as consistent with process for the initial Acting Appointment or as may be required by State or Federal statute.
2. If an acting incumbent is not selected to fill the vacancy in which they were acting, the incumbent shall revert to the pay and position held prior to such appointment if applicable.
3. A classified employee placed in an "Acting Status" for a supervisor/management position shall retain their classified status, but may be removed from the unclassified position at any time at the discretion of the City and reverted to the prior classified position and pay, retaining all prior seniority. A Letter of Appointment outlining the terms and conditions of the "Acting Status" will be developed for the signed acknowledgement of the employee, pursuant to Section 2.28.69.040 Acknowledgement of Conditions of Employment of this Personnel Policy.



**CHAPTER 2.28.70**  
**RECRUITMENT AND SELECTION OF EMPLOYEES**

**2.28.70.010: PURPOSE:**

This section establishes policies and procedures for recruiting and hiring applicants and advancing employees within the City of Belen personnel system. Selecting and advancing employees shall be on the basis of education (to include current certifications and or licenses as deemed necessary), experience, ability, knowledge, and skill levels relevant to the vacant position and as directly applicable to the requirements outlined in the job description for the position. Current and past work references may also be considered and skills tests may be administered for some positions. The City strives to recruit and select the best-qualified persons for positions in an open and competitive manner and to ensure equal employment opportunity for all applicants.

**2.28.70.015: ADA COMPLIANCE:**

The City will accommodate applicants and employees with a disclosed disability in compliance with the Americans with Disabilities Act (ADA) throughout the recruitment and hiring process, and provide "reasonable accommodation" when the cost of such is deemed "reasonable" within the City's ability to pay, and where to do so does not impair the City in its business necessities. If the results of any testing or exam give indication of physical or mental limitations that would prevent the applicant from reasonably performing the duties of the position, consistent with ADA regulations, the City will engage in an interactive process in an effort to identify an accommodation that is reasonable and effective, and if no reasonable accommodation is identified, then the applicant may be rejected as not meeting the required qualifications for the job. Subject to the provisions of the ADA, any applicant who tests positive for the presence of illicit drugs will be denied employment. A disabled applicant may be required to submit to a physical exam only subsequent to a job offer being made and only if all new hires are required to do the same.

**2.28.70.020: RECRUITMENT:**

- A. When a vacant position in the City needs to be filled, the hiring Department Director will fill out and submit a New Hire Requisition Form to the Finance Director and City Manager for approval and signatures. The City Manager will forward the approved New Hire Requisition Form to the Human Resources Director for action. The Human Resources Department will develop the vacancy announcement with a specific number assigned and shall specify position title, opening/closing dates for recruitment period, a complete job description (including minimum qualifications), the place and manner of completing employment applications, and other pertinent information. The Human Resources Department will take appropriate action to recruit or solicit employment applications from the general public and current employees interested in the vacant position.
- B. The Human Resources Department, upon consultation with the City Manager for management/director vacancies or the hiring Department Director for department vacancies, shall establish a means to effectively advertise and recruit for vacant positions.

Job vacancy announcements shall specify title, FLSA classification, basic duties, minimum qualifications, place and manner of accepting employment applications and other pertinent information.

- C. Internal Posting - All vacant full-time and part-time positions will normally first be posted internally for consideration by current employees. Internal postings will be for a minimum of five (5) working days. Postings will be made on the bulletin board of the Human Resources Department Offices. Copies of postings may be given to every Department Director and employee union. All interested applicants must complete a City of Belen Employment Application Form and any other specified application documents and submit all required materials, fully completed, to the Human Resources Department by the closing date listed on the vacancy announcement.
- D. External Posting - If no internal employees apply, or if an internal applicant is not selected for the vacant position, the Human Resources Department will post the position externally. The position at a minimum will be listed on the City of Belen website and the New Mexico Department of Labor/Workforce Solutions website. External postings will be for a minimum of five (5) working days. All interested applicants must complete a City of Belen Employment Application Form and any other specified application documents and submit to the Human Resources Department by the closing date listed on the vacancy announcement.
- E. Internal/External Posting - The City Manager or Human Resources Director may order a position to be simultaneously posted both internally and externally based on the specific needs of the City or the position.
- F. Incomplete, late or inaccurate applications - Applications submitted which are not complete, do not include all required information or materials, or are not submitted at or prior to the indicated deadline may, at the sole discretion of the City, be rejected. Applications that include inaccurate or false information may be rejected or excluded from further consideration.
- G. Ineligible Applications – Applications submitted by individuals who have been fired by the City for serious disciplinary measures will be ineligible for hire or rehire. Applications submitted by individuals who currently serve or within the prior two years have served as a voting member of the City Council are also ineligible for hire or rehire.

**2.28.70.030: APPLICATION PROCESS:**

Applicants must submit a City of Belen Employment Application Form and any other specified application documents for full-time, part-time and temporary vacancies during the recruitment period. A separate application must be submitted for each position for which the person wishes to be considered. The employment application submitted should specify the vacancy announcement number and the position title for the vacant position to which the applicant is applying. The City reserves the right to reject any or all applications that indicate on its face that the applicant does not possess or meet the minimum qualifications required for the position. Applicants and subsequently hired applicants who make false statements or who are found to have engaged in any type of deception or fraud in the application, testing, or background check process shall be rejected or immediately terminated from employment. In addition, an applicant shall be considered ineligible for hire and/or rehire if the applicant refuses to complete any required written, verbal or physical agility testing, skills or abilities testing or other requirements as directed by the Human Resources Department.

**2.28.70.040: RETENTION AND DESTRUCTION OF APPLICATION RECORDS:**

Rejected employment applications and other specified application documents collected by the Human Resources Department will be retained for three years from the closing date of the recruitment period. Rejected employment applications will be scheduled for records destruction with the City Clerk's office on the following year after completion of the third year of retention.

**2.28.70.050: TESTING:**

Applicants may be subjected to competitive testing which may include, but is not limited to: rating of education and experience, written, oral, or physical test. The City may request a demonstration of the skills or abilities needed to perform the essential job function in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101. See 29 C.F.R. Part 1630.14 (a) Pre-employment inquiry). The Human Resources Department shall maintain and assure the confidentiality and security of all physical or mental examinations and processes. Examinations shall be developed in accordance with established professional techniques and relevant federal laws, regulations, and guidelines.

**2.28.70.060: EVALUATION OF APPLICANTS AND SELECTION PROCESS:**

- A. Once the recruiting process is closed, all applications, including references and employment history, will be reviewed/evaluated by the Human Resources Director to make sure they are complete and the applicants meet the requirements of the position. Applicants who best meet the requirements of the position as determined by the job description, will be invited to appear for an employment interview with the Department Director in whose department the vacancy exists and other designated interview panel members, normally consisting of three (3) to five (5) individuals with general or specific knowledge of the position or field. Interview questions will be developed by the Department Director with the advice and review of the Human Resources Director. . The interview panelists will evaluate each candidate and make a hiring recommendation to the Department Director and/or City Manager.
  
- B. The Department Director will make a selection to fill the vacant position and shall justify the selection in writing on the Recommendation for Hire Form (for external candidate) or Personnel Change Form (for internal candidate). The Department Director will submit the Recommendation for Hire Form to the Human Resources Director, the Finance Director (for verification of funds) and the City Manager. The City Manager, in consultation with the Department Director and upon reviewing the panel findings and recommendations of the Human Resources and Finance Departments, will make the final hiring decision for all vacant positions and will authorize the selection by their signature.

**2.28.70.070: PHYSICAL EXAMINATION:**

Public health and safety demand that employees be physically able to perform the duties of the job classification to which they are hired. The physical requirements of the job constitute bona fide occupational qualifications (BFOQs). A physical examination may be required before an applicant is appointed/hired to any full time, part-time or temporary vacant position conducted at the expense of the City. The results of the exam will be evaluated by the Human Resource Director and, if needed, the Department Director.

**2.28.70.080: DRUG TESTING:**

Candidates selected for any position will be required to submit to, and successfully pass based on the current standard as set forth by the Human Resource Director, a post-offer drug and alcohol testing process. Failing or refusing drug testing will make it impossible to qualify the candidate, therefore resulting in a denial of employment.

## **2.28.70.090: BACKGROUND CHECKS:**

All candidates selected for employment with the City of Belen must agree to a thorough background check which may include previous employment verification, reference checks, motor vehicle driving history, proof of education level and professional certifications, criminal record check, and National Sex Offender Registry. Positions in the Human Resources and Finance Department, as well as public safety positions, will additionally require a full credit check. The City is subject to the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 NMSA 1978, and may take into consideration a conviction, but the conviction will not operate as an automatic bar to obtaining public employment. Employers may only take into consideration a conviction after the applicant has been selected as a finalist for the position. If you are a finalist (one of the top three applicants being interviewed and considered for a position) you will be asked about and the employer will verify any motor vehicle or criminal violations as part of the employment investigation process.

## **2.28.70.100: EMPLOYMENT ELIGIBILITY VERIFICATION:**

- A. All candidates who have accepted an offer of employment with the City shall complete and sign the Employment Eligibility Verification 1-9 Form the first day of employment or no later than three (3) days of hire. On the form, an employee must attest to their employment authorization. Also, the employee must present to the Human Resources representative acceptable documents evidencing identity and employment authorization. The City will examine the employment eligibility and identity documents an employee presents. This list of acceptable documents can be found on the last page of the 1-9 Form. The City of Belen Human Resources representative will complete the 1-9 Form to document verification of the identity and employment authorization of each new employee (both citizen and noncitizen) hired for employment and will retain the 1-9 Form for three years after the date of hire or for one year after employment is terminated, whichever is later. 1-9 Form records retained by the City will be made available for inspection by authorized government officials from the Department of Homeland Security, Department of Labor or Department of Justice, if necessary.
- B. The City of Belen participates in E-verify and uses an internet based system to compare information from an employee's Employment Eligibility Verification 1-9 Form, to data from the U.S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility.

The City of Belen Human Resources Department also reports new hires and rehires to the New Mexico New Hires Directory through their internet based system as required under New Mexico Law (Sections 50-13-1 to 50-13-4 NMSA 1978) and the Federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, which requires employers to report newly hired and re-hired employees to a state directory within 20 days of their hire date.

**2.28.70.101: INSURANCE AND BONDING REQUIREMENTS**

All candidates who have been offered employment in a position where insurance and/or bonding is required by law must submit documentation demonstrating that they meet the criteria for such insurance and/or bonding and are currently or will be insured and/or bonded within thirty (30) days of accepting the position with the City.

**2.28.70.110: EMPLOYMENT OF RELATIVES:**

- A. Immediate family members of current employees are disqualified from occupying a position (either through hiring, promotion, or transfer) that will be working directly for or supervising the current employees. The City Council, with recommendation and advice of the Human Resources Director and/or City Manager, may waive this provision by approval of a resolution, when this relationship will not create a direct or indirect supervisor/subordinate relationship; or will not create either an actual conflict of interest or the appearance of a conflict of interest and another qualified candidate or employment alternative is unavailable.
  
- B. For the purposes of this provision, immediate family members are any persons who are related by blood or marriage to include spouse, domestic partner, parent, mother in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, great grandparent and cousins.
  
- C. Employees who marry or become part of a relative relationship or members of the same household after assuming a position may continue employment as long as there is not:
  - 1. A direct or indirect supervisor/subordinate relationship between the employees; or
  - 2. An actual conflict of interest or the appearance of a conflict of interest.

If one of the above situations occurs, the City will attempt to transfer one of the affected employees to another suitable position within the City of Belen organization, without loss of pay or seniority to the employee. If an accommodation of this nature is not feasible, the employees will be permitted to determine which of them will resign.

**2.28.70.120: NEW HIRE ORIENTATION:**

All new employees will be provided with a new hire benefits orientation upon hire with the City of Belen. Benefit and insurance enrollments will be conducted by the Human Resources Department.

**CHAPTER 2.28.80  
CHANGES IN EMPLOYMENT STATUS**

**2.28.80.010: PROCEDURE FOR EMPLOYMENT STATUS**

**CHANGES:**

All employment status changes (change in category of employment, pay changes, transfers, promotions, demotions, separations, etc.) shall be documented in writing on a Personnel Change Form, pursuant to Chapter 2.28.69.020 Procedure for Employment Status Changes.

**2.28.80.020: PROMOTION:**

The City of Belen encourages the professional growth of its employees and rewards the initiative, creativity, effort, commitment, and diligence of its employees through the promotional process. City employees are encouraged to take advantage of promotional opportunities and apply for higher paying positions for which they qualify. An employee's eligibility for promotion will be determined by the requirements of the vacant position and their education, work performance, work behavior/conduct, skills, knowledge, and ability to meet those requirements.

- A. When an employee is selected for promotion, the employee shall sign a Letter of Appointment acknowledging their understanding of the terms and conditions of the employment appointment with the City, pursuant to Chapter 2.28.69.040 Acknowledgement of Conditions of Employment, and also read and sign the job description of the position. Failure to obtain such an acknowledgement shall not alter the terms and conditions of the employee's appointment.
  
- B. Current employees who receive a promotion shall complete a probationary period of ninety (90) days. If the employees cannot successfully finish their probationary period, the HR Director will recommend employment decisions to the City Manager, and the City Manager at its own discretion adopts or modifies or declines the HR Director's recommendation consistent with this Policy.

**2.28.80.030: TRANSFER:**

A. General Transfer. An employee may be moved from one position to another, without a change in current salary, either voluntarily or involuntarily. An employee may be transferred if it is in the best interest of the City. Involuntary transfers cannot be disputed or grieved. An employee may be transferred from one position to another position in the same classification within a department or office. Intradepartmental transfers may be made with the recommendation of the Department Director and the signature approval of the City Manager. Current employees who receive a general transfer shall complete a probationary period of ninety (90) days. If such a transfer involves a probationary employee, time served in the former employment status shall be credited toward achievement of classified status and accumulated personal leave shall be retained. If the employees cannot successfully finish their probationary period, the HR Director will recommend employment decisions to the City Manager, and the City Manager at its own discretion adopts or modifies or declines the HR Director's recommendation consistent with this Policy

B. Medical Transfer. An employee who has been certified by a licensed physician as being physically unable to perform the duties of the employee's current position may be transferred to a position in which the physician certifies the employee is able to work, if one is available that the employee is qualified to perform. Employees shall meet with a member of the Human Resources Department to engage in an interactive communication process about the need for any work accommodations. Transfers require the signature approval of the City Manager. Current employees who receive a medical transfer shall complete a probationary period of ninety (90) days. If the employees cannot successfully finish their probationary period, the HR Director will recommend employment decisions to the City Manager, and the City Manager at its own discretion adopts or modifies or declines the HR Director's recommendation consistent with this Policy



**2.28.80.040: DEMOTION:**

A. An employee may be demoted to a vacant position for which the employee is qualified when the employee would otherwise be terminated because the employee's position is being abolished and there are no appropriate vacancies at the same level, or when the employee's job is being reclassified, or when the employee does not have the ability to perform satisfactorily in their current position in the estimation of the City, or when the employee voluntarily requests a demotion.

A. Demoted employees will normally receive a reduction in pay to the salary of the new position.

B. When an employee is approved for Demotion, the employee shall sign a Letter of Appointment acknowledging their understanding of the terms and conditions of the demotion employment status with the City, pursuant to Chapter 2.28.69.040 Acknowledgement of Conditions of Employment and also read and sign the job description of the position. Failure of the employee to sign or the City to obtain such an acknowledgement shall not alter the terms and conditions of the employee's appointment.

C. Current employees who receive an involuntary demotion shall complete a probationary period of ninety (90) days. If the employees cannot successfully finish their probationary period, the HR Director will recommend employment decisions to the City Manager, and the City Manager at its own discretion adopts or modifies or declines the HR Director's recommendation consistent with this Policy

**2.28.80.050: SEPARATION OF EMPLOYMENT:**

City Property and Access. At the time of separation from employment with the City, all keys, phones, pagers, ID cards, passwords, computers, vehicles, equipment, assets, records or other items of City property or access to City property and records in the employee's custody or known to the employee shall be made known to and provided/returned to the Department Director or designee and documented on a Termination Checklist for submission to the Human Resources Department. An employee's access to City equipment, computers, websites and property shall terminate completely (with the exception of all access granted to any member of the public) immediately upon termination.

A. Benefit/Exit Interview. A Termination Benefit/Exit Interview with the Human Resources Department will be scheduled with the separating employee prior to their last day, when possible. A Benefit/Exit Interview is conducted to apprise the employee of their options for the continuation of any benefits available upon separation (e.g. COBRA), as well as to determine the employee's input as to how to improve the employment process and environment.

B. Equipment reconciliation. When an employee separates they will be encouraged to return all City-issued equipment. Any equipment not returned will be deducted from their final paycheck. .

C. Types of Separation:

1. Resignation. An employee who voluntarily resigns their position with the City is required to give written notice of their intent to resign two (2) weeks in advance of their final work

day. Failure to provide a written two week notice of resignation may be grounds for refusal of future employment with the City and may affect employment references.

- a. The original letter or written notice of resignation shall be forwarded to the Human Resources Department within two (2) days of notification to the Department Director and must be accompanied by an Personnel Change Form; or If the employee gives a verbal resignation, the Department Director shall ensure that a Personnel Change Form with explanation of the verbal resignation documented on the form is forwarded to the Human Resources Department within two (2) days of the notification.
- b. The City Manager, with the recommendation of the Department Director, may relieve the employee from reporting to work during the two (2) week notice period, if documented in writing on the Personnel Change Form.
- c. An Employee may rescind their resignation within three (3) work days of submitting their resignation; the City may honor the rescission of resignation if it is submitted within the prescribed time limit.
- d. If an Employee gives a verbal resignation, the Supervisor/Department Director shall require the employee to submit a written notice of resignation.

2. Job Abandonment/Effective Resignation. An employee will be considered to have effectively resigned if the Employee is absent from work for three (3) consecutive work days without authorization/notification or a satisfactory reason for such absence, except otherwise determined by the HR Director as exceptional circumstances.

3. Termination. The employee's Department Director may recommend termination of a classified employee to the City Manager for reasons which shall include, but are not limited to: continued unsatisfactory performance after being given the opportunity to correct, violence or threatened violence in the workplace, theft, fraud, the possession or use of alcohol/drugs, illegal activity, gross misconduct, a serious criminal conviction as determined by the HR Director, loss of license or other condition that makes it impossible for the employee to carry out the duties of their job title or that adversely impacts the City, unacceptable conduct on the job, insubordination, or engaging in an unsafe practice that places the employee, other employees, or public or private property at-risk. The decision to dismiss a classified employee shall be made by the City Manager, pursuant to the termination and disciplinary processes of the City, as outlined within the City of Belen Personnel Policy and the current Collective Bargaining Agreement (CBA) in force at the time of the violation, as applicable to the employee and violation.

While the preference of the City shall be to utilize progressive discipline in order to afford an Employee reasonable opportunity to improve on the job, the City recognizes that some infractions that are illegal, violate the provisions of Employee Conduct contained in Chapter 2. 28.120, are of a violent, potentially violent, prejudicial or unsafe nature or that may prove so disruptive to the workplace, other employees, the organization or the public or so offensive or dangerous that they require immediate removal from the workplace environment and may result in immediate suspension, administrative leave pending investigation, or permanent termination.

4. Reduction in Workforce (and recall provisions). Occasionally, despite the best efforts of the City, certain economic or funding circumstances may result in the unanticipated need to reduce the City workforce in order to address reduced revenues, loss or reduction in grants, reorganization, reductions in or the elimination of municipal services, or other budgetary, policy and organizational conditions impacting organizational staffing. If such reductions occur, the following procedures are required to be followed in order to provide a minimalized and orderly impact on City employees:

- a. Notice. Employees will be given written notice of any reduction in force specifying the reasons and the expected duration of the reduction in force.
- b. Order. If it becomes necessary for the City to reduce the number of City employees because of a lack of funds or a lack of work, such reductions will normally occur in the following manner:
  1. Temporary and Probationary employees will normally be laid off before full or part-time classified employees. The City Manager may determine on a department by department basis that a position cannot be filled by a classified employee and a temporary or probationary employee must be retained to meet specific job or City requirements.
  11. Reduction in Force of Classified Employees shall be recommended by the Department Director and approved by the City Manager. Length of City service will normally be the determining factor in a reduction in force. However, an employee's suitability for jobs remaining, ability to perform available work, and past job performance may also be considered.
- c. Employees to be laid off may be notified at any time during a pay period and shall be allowed to work through the end of that regular pay period or receive pay to the end of that period.
- d. Accrued personal leave shall be paid on the next regularly scheduled payday.

D. Seniority. Employees will retain seniority in any position or classification previously held, provided the Employee is capable of performing the work.

E. Recall. Employees laid off or demoted due to a reduction in force will normally be called back to work in their seniority order within classification according to the following procedures:

1. All Employees laid off by the City due to lack of work, lack of funds or a reduction in work force are eligible for rehire for up to six (6) months. The City will advise the employee of their recall by certified or registered United States mail with delivery confirmation. A copy of such recall notice will be furnished to the local Union President, if applicable.

2. No new employees within the affected job, title and classification will be hired by the City during the six (6) month recall period until eligible laid off Employees have been given the opportunity to return to fill reopened positions. An employee, upon receiving notice of recall, shall within ten (10) working days of delivery confirmation notify the City Manager in writing of their intent to return to work. A recalled employee must report to work not later than fourteen (14) calendar days from the date of delivery confirmation, unless there are extenuating circumstances approved by the City Manager. An employee who fails to respond to the recall within ten (10) working days will forfeit any and all recall rights.

3. Laid-off employees have the responsibility of keeping the City informed as to their correct mailing address. Failure to do so on the part of the employee shall result in the forfeiture of any and all recall rights. Laid-off employees will be kept on an active list for recall for a minimum of nine (9) months.

4. A full-time or part-time Classified Employee who returns to their previous position will not have to serve a new probationary period.

F. Retirement. Employees who are contemplating retirement should contact the New Mexico Public Employees Retirement Association (PERA) to certify their eligibility for retirement benefits and obtain an estimate of benefits. The employee's Supervisor/Department Director and the Human Resources Director should also be notified of the employee's intent to retire with an estimated date of retirement in order to assist in the process and facilitate a smooth transition. Employees who file notice with the City and PERA for retirement are not eligible for Unemployment Compensation.

G. Death. In the event of an employee's death, notification to the City by a family member, by a law enforcement agency if HR director determines to be necessary, publication of a notice of death in a newspaper of record, receipt of a copy of a certificate of death or mortuary notice or other reasonable record affirming the death of an employee shall serve to self-terminate employment. The last day of work recorded by the employee shall serve as the termination date for purposes of determining the last date of employment. The deceased employee's estate, as determined by the records on-file with the City Human Resources Department, as stated by the employee during their employment, shall serve as the party entitled to any and all benefits to which the employee would have been entitled had they resigned from City service in good standing.

**CHAPTER 2.28.90  
PAY AND COMPENSATION**

**2.28.90.010: POLICY**

The assignment of employees to positions and pay rates shall be recommended by the Human Resources Director, submitted for approval by the City Manager, and ratified at the Organizational Meeting of the City Council. Any wage and salary increases, when authorized, shall be dependent upon the financial and budgetary constraints of the City as outlined in the City's Annual Operating Budget.

**2.28.90.050: TOTAL COMPENSATION:**

In determining the total compensation value of any employee position, the full cost to the City of providing benefits to the employee must be considered. Total compensation is calculated as base salary plus cost of benefits. Preference will always be given to maintaining the cost and level of benefits to employees, before considering salary adjustments. In comparing benefit packages provided in the labor market, the City may evaluate both level and total compensation costs or other factors as deemed appropriate.

**2.28.90.130: SHIFT DIFFERENTIAL PAY:**

Shift differential pay is intended to compensate police officers and paid fire fighters who report to work at odd hours, to relieve the previous shift as part of their duties and responsibilities. Shift work is recognized where more than one group of employees report to work during the same twenty-four (24) hour workday. Employees who work a graveyard shift shall receive an additional fifty cents (\$0.50) per hour for each hour of regular shift pay for the entire shift.

**2.28.90.140: FINAL PAY.**

An employee who is separated from employment shall receive their final pay in accordance with Section 50-4-4 NMSA 1978, which provides:

- A. Whenever an employer terminates an employee, the unpaid wages or compensation of such employee, if a fixed and definite amount, and not based on a task, piece, commission basis or other method of calculation, shall, upon demand, become due immediately and the employer shall pay such wages to the employee within five (5) days of such termination.
- B. In all other cases of terminated employees, the settlement and payment of wages or compensation shall be made within ten days of such termination.
- C. An employee who resigns shall receive their paycheck in accordance with Section 50-4-5 NMSA 1978, which provides:

Whenever an employee (not having a written contract for a definite period) quits or resigns their employment, the wages or compensation shall become due and payable at the next succeeding payday.

## **2.28.90.150: OVERTIME AND COMPENSATORY TIME:**

- A. Department Director is a management position and is intended to be exempt from overtime pay requirements under the FLSA administrative exemption. The exemption requirement shall be reviewed and determined by HR Director.
- B. The City shall not change the workweek to avoid payment of overtime. A change to the scheduled work hours within the workweek shall not be considered a change to the workweek.
- C. Time worked in excess of 40 hours by non-exempt employees during the designated workweek shall be compensated in accordance with the provision of the Fair Labor Standards Act (FLSA).
- D. With the permission of the City Manager, Department Directors may, at their discretion, permit non-exempt employees to award Compensatory Time on a case by case basis, where meetings, training, or other approved work related assignments require an employee to work extended hours outside of their normal work day, in lieu of pre-authorized Overtime. The Compensatory Time rate shall be one and one-half (1.5) hours Compensatory Time leave for each hour of overtime worked when a non-exempt employee works more than forty (40) actual work hours in a normal work week. Compensatory Time hours must be used within sixty (60) days, unless otherwise approved by the City Manager in writing and in advance.
- E. The Department Director shall determine the need for employees to work Overtime, and be responsible for authorizing Overtime work in advance and in writing. Employees working Overtime without proper authority will be subject to disciplinary action. The Overtime rate shall be one and one-half (1.5) times regular pay for each hour of Overtime worked when a non-exempt employee works more than forty (40) actual work hours in a normal week. Hours in excess of forty (40) per week will not be subject to PERA contributions. Fire and Police Departments shall refer to their SOP on Overtime pay.
- F. All time spent in training, at workshops, meetings, and related travel when such attendance is made mandatory (non-voluntary) by the City shall constitute hours worked and shall be used to calculate overtime eligibility under the FLSA.
- G. Time spent attending authorized and voluntary training, workshops, conferences, meetings, seminars, etc. shall not count towards Overtime and shall count as work time only if it occurs during an employees' normal work day and work time (i.e., for a traditional Monday through Friday work schedule) (Voluntary attendance at functions listed above on Saturdays and Sundays is not counted as work time, nor shall any other time not identified above, unless directed or approved in advance for compensation by the Director).
- H. The special exemptions under Section 207 of the Fair Labor Standards Act (FLSA) allowed for law enforcement and fire protection personnel with regard to Overtime will be applied according to the adopted FLSA standard by the City.

I. Compensatory Time:

1. Compensatory time is given to an employee for work done above the regular work schedule in lieu of overtime. Compensatory time shall be allowed and accrued up to a maximum of forty (40) hours. Prior to working compensatory time, the employee must have prior approval of their Supervisor or Department Director. Department Directors are responsible for approving and submitting documents for compensatory time with payroll.
2. Employees who have accrued compensatory time shall be scheduled to take such leave within sixty (60) days of accrual. Compensatory time shall be used by the end of the fiscal year, June 30<sup>th</sup>, and will not be carried over. Compensatory leave shall be scheduled in advance with the written approval of the Department Director and may only be used during regularly scheduled employee hours.

**2.28.90.160: ON-CALL PAY:**

A non-exempt employee may be required to remain on call after their normal or alternative work schedule to answer and respond to City emergencies. An Employee placed on-call will be provided a radio or cell phone for the purpose of notification to report for work. Employees are paid for two (2) hours per day when placed On-Call. An Employee's on-call status shall be recorded on their time sheet.

- A. City employees assigned to "On Call" status shall be provided with a take home City of Belen Vehicle to be used only while responding to calls and to perform the assigned City duties when necessary.
- B. Vehicles designated for on-call use will be designated by the Department Director.
- C. Various City positions will be designated as on-call eligible and are as follows: Public Utilities Foreman, Public Utilities Operators III, II, and I.
- D. On-call schedules are designated by the Department Director.
- E. The nonexempt employee shall be paid at the Overtime or Comp Time rate for hours in excess of forty (40) hours of actual work for the week.
- F. On-call wages are not PERA calculated.

**2.28.90.170: CALL-BACK PAY:**

When an unscheduled Employee accepts Management's request to report to work immediately, the Employee will be paid as directed by the Fair Labor Standards Act (FLSA). Employees who are called to report to work on their regular day off or that have been recalled to work after having left the Employer's premises shall be guaranteed a minimum of two (2) hours of pay at the applicable straight time or overtime rate, as is applicable to the total hours worked by the Employee, with call back time, for that pay week.

**2.28.90.180: HOLIDAY PAY:**

Legal public holidays shall be approved and authorized by the City Council for each calendar year, usually at the regular Council meeting held in December for the next calendar year's designated holidays. The following conditions will apply with respect to holidays and holiday pay:

- A. Part-Time Employees working less than 20 hours per week and Temporary or Seasonal Employees are not entitled to holiday pay.
- B. When a holiday falls on an employee's day off, the employee's holiday shall be observed on the following work day, work load permitting, as determined by the Department Director.
- C. When a holiday falls during an employee's authorized annual leave or personal day, the day shall be counted as a holiday, and not as a leave day.
- D. In order to receive pay for a designated legal holiday, employees shall be in work or paid leave status on their scheduled work day immediately preceding and following the holiday, or must have worked on the stated holiday. An employee absent without annual or personal day leave on their scheduled work day before or after a holiday will not receive pay for that holiday.
- E. Holiday pay will be based on the employee's regular hours and rate of pay for that day.
- F. Full-time employees who are required to work on a holiday will be paid double their regular pay for the actual hours worked on the holiday or as described in the applicable CBA. Employees will be paid overtime based on the rules of the FLSA.

**2.28.90.181 GRATUITIES:**

All City employees are prohibited from accepting gifts or other considerations given with the intent of modifying the employees' performance of duties or encouraging the employees to make purchases from the individuals or vendors involved. Employees will maintain the highest moral standards, and any attempt to provide gifts or other consideration, or to influence employee performance in any way, shall be reported to the Department Director.



**2.28.90.182: PER DIEM AND MILEAGE:**

All payments of per diem and mileage allowances to City employees will be made pursuant to the current adopted Travel Policy established by the City. No mileage or per diem shall be paid for regular job duties performed within the boundaries of the City without the prior written authorization of the City Manager. Approved mileage requests must include a copy of current and valid employee private auto insurance coverage for the vehicle used.

**2.28.90.190: BENEFIT PLAN:**

The City of Belen participates in an overall medical and life benefit plan and other various supplemental insurance and benefit providers. The City of Belen offers fringe benefits to full-time and partial fringe benefits to part-time employees. Specific details of the benefits available and costs to an employee are available in the Human Resources Department, including health insurance, PERA benefits, and Cafeteria Pre-Tax plans. While on Workers' Compensation Leave an employee shall not accrue PERA benefits.

**CHAPTER 2.28.100  
ABSENCE AND LEAVE**

**2.28.100.010: AUTHORIZED LEAVE:**

Authorized Leave is any absence, with or without pay, during regularly scheduled work hours which has been approved by the City Manager, Department Director or other designated Supervisor. Leave is granted in accordance with work load requirements and must be approved in writing in advance whenever possible, using the City of Belen Leave Request Form before the date of the leave. Approved Leave Request Forms will be submitted to the Finance Department/Payroll Administrator with the time and attendance records each pay period. Employees and their Department Director or other designated Supervisor are mutually responsible for planning and scheduling the use of Employees' Personal Leave throughout the year. Employees should request leave in a timely manner, and Supervisors should provide timely responses to Employees' requests. The Department Director or designated Supervisor shall approve or deny the requested leave within three (3) days of receipt of the request. Personal Leave will not be unreasonably denied.

**2.28.100.020: UNAUTHORIZED LEAVE:**

Unauthorized leave is any absence without the approval of the City Manager, Department Director or other designated Supervisor. Unauthorized leave is subject to loss of pay and/or disciplinary action, up to and including termination. If an Employee is absent without authorized leave for a period of three (3) consecutive days, they will be considered to have effectively resigned from City employment, without appeal except exceptional circumstances decided by the HR Director.

**2.28.100.030: PERSONAL LEAVE (Annual Leave, Sick Leave, and Personal Day):**

- A. Personal leave is an employee authorized leave benefit provided by the City which provides time off from regular duty, with pay: 1) when an employee schedules time off from work ("Annual Leave"); or 2) is unable to work due to the employee's illness, or due to illness in the employee's immediate family ("Sick Leave"). Personal leave may be taken from time to time in hourly increments, depending on unused accrual and subject to approval by the employee's immediate supervisor. In addition, all full-time employees receive a personal day ("Personal Day") consisting of eight (8) hours per year. Part-time employees working twenty (20) hours or more per week will receive a pro-rated Personal Day. Temporary or seasonal employees do not receive a Personal Day.
- B. Eligibility. All full-time employees and part-time employees working more than 20 hours per week earn personal leave. Part-time, seasonal and temporary employees do not earn personal leave.
- C. Personal Leave Request and Approval. All personal leave requests are subject to the approval of the Department Director, designated Supervisor and/or City Manager. Personal Leave will not be unreasonably denied. Employees must submit a Leave Request Form as soon as they are aware of the desire or need for leave. Every effort will be made to accommodate the Employee's request, but final approval

will depend upon the City's needs being fully met. Employees and their Department Director or other designated Supervisor are mutually responsible for planning and scheduling the use of Employees' Personal Leave throughout the year. Leave requests not received and approved in advance of the leave being taken and which are not of an emergency nature may result in disciplinary action unless exceptional circumstances decided by the Department Director consistent with this Policy. No Personal Leave will be granted or taken before it is accrued.

1. In the event a recognized holiday occurs during an Employee's Annual Leave or Personal Day, the Employee will be paid for the holiday and the time not charged to Personal Leave.
  2. In case of an emergency or illness, notification must be made to the Employee's Department Director and/or immediate Supervisor of the Employee's request to take Sick Leave within one hour of their scheduled time to work or as soon as reasonable. For an illness lasting less than three (3) days, a doctor's certificate attesting to an Employee's illness and ability to resume regular duty may be required by the Employee's Department Director/immediate Supervisor.
  3. When an employee is absent from work for three (3) or more days for Sick Leave, their Supervisor may require a doctor's statement certifying there was a medical reason for the absence.
- D. Abuse of Personal Leave. A pattern of absence which may impact City work load, performance and services provided, is defined as, but not limited to, when an Employee's attendance record shows a somewhat consistent sequence of absences, i.e. almost always Mondays, Fridays, Mondays and Fridays before and/or after Holidays, times of overtimes, certain week(s) of the month, or pay days. Abuse of Personal Leave may result in disciplinary action up to and including termination. Failure to submit a doctor's certificate when requested may result in disciplinary action, up to and including termination.
- E. Accrual of Personal Leave.
1. All Full-time Classified Employees shall accrue a total of one hundred twenty (120) hours of Annual Leave per year up to and including three (3) years of service. After the completion of three (3) years of service, the employee shall accrue one hundred forty-four (144) hours of Annual Leave per year. After the completion of seven (7) years of service, the employee shall accrue one hundred sixty-eight (168) hours of Annual Leave per year. After the completion of twelve (12) years of service, the employee shall accrue one hundred ninety-two (192) hours of Annual Leave per year. After fifteen (15) years of service, the employee shall accrue two hundred sixteen (216) hours of Annual Leave per year. Annual Leave is accrued on a biweekly basis at a rate consistent with the aforementioned annual accrual. Part-time Classified Employees shall accrue a pro-rated amount of Annual Leave. Temporary or seasonal employees do not accrue Annual Leave.

2. All Full-time Classified Employees shall accrue 120 hours of Sick Leave per year. Part-time Classified Employees shall accrue a pro-rated amount of Sick Leave. Temporary or seasonal employees do not accrue Sick Leave.
3. While on Workers' Compensation Leave or on Leave without Pay, an employee shall not accrue Personal Leave or Holiday Leave.

F. Maximum Accumulation of Personal Leave.

1. No more than two hundred forty (240) hours of Annual Leave may be carried over into the new calendar year for City employees. All hours in excess of two hundred forty (240) hours must be taken by the last pay check in December, including any time accrued through December 31<sup>st</sup>. Any hours in excess of two hundred forty (240) at the last pay check of the year will be relinquished. The City Manager may approve an extension of time only when it is in the best interest of the City.
2. Accumulated Sick Leave will cap at eight hundred (800) hours and no additional sick leave will accrue once an employee's accrual reaches this cap. Sick Leave in excess of eight hundred (800) hours shall be paid to the employee once each year at a rate of twenty five percent (25%) of their unused sick leave. This compensation will be computed on a calendar year basis and paid in January of each year (Res. 1995-31).
3. Retirement or Separation from Employment. At retirement, death or separation from employment, all unused, accrued Annual Leave shall be paid out in one lump sum with the employee's final paycheck, unless otherwise approved by the City Manager. At retirement or death, all unused, accrued Sick Leave shall be paid out in one lump sum with the employee's final paycheck, unless otherwise approved by the City Manager. Sick leave will not be paid out for separation from employment.

G. Voluntary Sick Leave Transfer. There are times when employees may face conditions which require an extended absence from duty and subsequently result in the exhaustion of their Sick Leave. In such cases, the City Manager may permit a regular full-time employee to receive Sick Leave from other qualifying employees under the following circumstances:

1. The employee has submitted a request for Family Medical Leave (FMLA); has provided all required documentation; and has been approved to be placed on FMLA by the Human Resources Director. The employee must abide by all personnel rules regarding FMLA in accordance to Section 2.28.100.050.
2. The employee must submit a separate written request for the donation of supplemental Sick Leave to the Human Resources Director.
3. The Human Resources Director has verified the circumstances of the request and has recommended eligibility for supplemental Sick Leave (on a case by case basis) to the City Manager.

4. The Human Resources Director has confirmed that the employee has depleted or will shortly deplete their entire accumulated Personal Leave balance.
5. The Human Resources Director has confirmed that the employee has abided by all personnel rules regarding Personal Leave use, in accordance to Section 2.28.100.030.
6. The City Manager, based on the recommendation of the Human Resources Director, shall determine the amount of donated Sick Leave transferred to the requesting employee, if any. The total amount of donated Sick Leave which an employee may receive under this section shall not exceed the equivalent of two (2) full pay periods for that employee.
7. If the employee exhausts their FMLA hours they are no longer eligible to receive Sick Leave Transfers.

Requests for donated Sick Leave shall be considered by the City in the order which they were received and shall be based on the availability of donated hours.

Sick leave shall be donated in one (1) hour increments, with the minimum donation being 8 hours per donor. If there are no donated hours available, the City Manager may, in their sole discretion, and with the recommendation of the Human Resources Director, permit up to two (2) weeks of administratively granted Sick and/or Administrative Leave.

Donations of Sick Leave shall only be considered from employees who have accrued a Sick Leave balance of at least 160 hours. In no event may the employee request a transfer of an amount of Sick Leave that would result in their own accumulated Sick Leave going below 160 hours.

Any amount of donated Sick Leave transferred by employees for use under this section which remains unused after satisfying the requests for which the Leave is donated shall be banked for use in future or additional requests by other employees determined to be eligible under this subsection.

The Voluntary Sick Leave Transfer program is a completely voluntary and discretionary service coordinated by the City on behalf of the employees who have expressed a desire to transfer time to assist other fellow employees and in no way constitutes an entitlement or offering of a negotiable employee or union benefit, right, or privilege, nor legal obligation by the City. The Voluntary Sick Leave Transfer program is not offered or to be considered an automatic employee benefit under either the City Personnel Policy or the Collective Bargaining Agreement.

**2.28.100.040: BEREAVEMENT LEAVE:**

Bereavement Leave is leave with pay for which the Employee is not charged Personal Leave due to the death of an immediate family member. An employee who wishes to take time off due to the death of an immediate family member should notify their Department Director or Supervisor immediately. Failure to provide such proof may result in the Employee being charged with unauthorized leave without pay. An Employee may, with their Department Director's or Supervisor's approval, use available Personal Leave for additional time off as necessary. At the discretion of the City, up to a maximum of 3 days of bereavement leave may be taken by an Employee for each death of an immediate family member.

**2.28.100.050: FAMILY AND MEDICAL LEAVE ACT (FMLA).**

The City will comply with all applicable requirements of the Family and Medical Leave Act (FMLA). The FMLA provides eligible employees up to twelve (12) weeks of unpaid, job protected leave within a 12-month period for certain family and medical reasons. When an employee returns to work after FMLA leave, they will be in the same or equivalent position with equivalent pay, benefits and other employment terms and conditions. Employees are required to use any Personal Leave towards FMLA leave before unpaid leave is granted. Employees will be placed on FMLA leave when out on Workers' Compensation Leave or Short-term Disability.

- A. Eligibility. Employees who have worked for the City for at least twelve (12) months (which need not be consecutive) and have worked at least one thousand two hundred fifty (1,250) hours or more during the 12-month period immediately preceding the start of FMLA leave are eligible.
- B. Reason for Leave. Eligible employees may receive FMLA leave for the birth and care of a newborn child, for the placement of a child with the employee for adoption or foster care, to care for an immediate family member (parent, spouse, or child) with a serious health condition, when an employee is unable to work because of a serious health condition, or when the employee's own serious health condition makes them unable to perform an essential function of their job.
- C. Covered Military Service Member. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to twenty-six (26) weeks of unpaid FMLA leave in a single twelve 12-month period to care for the service member. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of twenty-six (26) weeks of all types of FMLA leave. The 12- month period is calculated forward from the date an employee's first FMLA leave begins.

D. Serious Health Condition. A serious health condition is an illness, injury, or physical/mental condition that involves:

1. Any period of incapacity or treatment that requires inpatient care in a hospital, hospice, or residential medical care facility; or
2. Any period of incapacity requiring continuing treatment by a healthcare provider. Continuing treatment by a healthcare provide is two or more visits, or one visit that results in continuing treatment under the healthcare provider's supervision; or
3. Pregnancy or pre-natal care, or bonding; or
4. A permanent or long-term condition for which treatment may not be effective.

Serious health conditions do not include short-term conditions such as illnesses that last a few days or out-patient surgeries that typically require only a brief recovery period. Employees may use Personal Leave to cover time off for these conditions.

E. Notice and Verification. Employees who want to take FMLA leave ordinarily must provide the City with at least 30 days' notice of the need for leave, if the need for leave is foreseeable. If the need is not foreseeable, the employee should give as much notice as is practicable. Request for FMLA leave forms are available from the Human Resources Department. Employees must submit a Medical Certification Form with their request for FMLA leave for medical reasons. The Medical Certification for intermittent leave or leave on a reduced schedule for planned medical treatment must include the dates on which the treatment is expected and the duration of treatment.

F. Calculation of Leave. Eligible employees may use up to twelve (12) weeks of leave during any twelve (12) month period. The City will use a rolling 12-month period measured backward from the date an employee uses any FMLA leave. Each time an employee uses leave, the City computes the amount of leave the employee has taken under the FMLA, subtracts it from the twelve (12) weeks and the balance remaining is the amount the employee is entitled to take at that time.

G. Maintenance of Benefits. An employee shall be entitled to maintain all City insurance benefits for the employee on the same basis as if the employee had continued to work for the City. To maintain uninterrupted coverage for spouses, partners, and other dependents, the employee will have to continue to pay their share of the cost.

G. Temporary Work Assignments. Where medical necessity dictates the need to use scheduled intermittent leave or a reduced work schedule, the City may require the employee to transfer temporarily to an alternative position that better accommodates recurring periods of leave than the employee's regular position. In addition, the City may transfer an employee to a part-time job with the same hourly rate of pay and benefits as long as the employee is not required to take more leave than is medically necessary.

- H. Return to Work. Employees returning to work from an FMLA leave due to their own serious medical condition must submit a doctor's statement certifying that they can return to work and perform the essential functions of their job with or without a reasonable accommodation. If an employee does not return to work within three (3) days after approved FMLA leave has expired and has not contacted the Human Resources Department to get an approved extension, they will be considered to have abandoned their job and will be separated from employment. Employees are not entitled to reinstatement if any of the following are true: (1) if they would have lost their jobs regardless of taking leave (such as where an employee's department is eliminated) and (2) if employees took FMLA leave based on a fraudulent or fake certification.
- I. Holidays and Personal Leave. Employees on FMLA leave without pay are not eligible for holiday pay and shall not accrue personal leave while on unpaid FMLA leave.
- J. Confidentiality of Medical Records. The Human Resources Department will keep medical records and documents pertaining to an employee or an employee's family separate from the employee's personnel file and will treat them as confidential medical records. Department Directors may be informed regarding necessary restrictions on work and accommodations.

**2.28.100.060: ADMINISTRATIVE LEAVE:**

Employees may be placed on administrative leave with pay should any action of the Employee require investigation, or should it be determined by the City Manager to be in the best interests of the City, employee, or other employees while the investigation is conducted. Administrative leave shall not constitute discipline.

When it comes to the attention of the City Manager that an employee has been charged with a crime which is a felony under the laws of the State where the charges are brought, the City Manager may, upon determining that it is in the best interests of the City in order to protect and maintain the public's confidence and trust in City government, place the employee on unpaid administrative leave pending the outcome or disposition of the criminal charges.

The basis for a determination to place an employee on administrative leave shall be documented in writing and shall be submitted to the employee, the City Manager, and the Human Resources Director at the time the administrative leave is determined.

The City Manager may authorize administrative leave with pay should the City close its offices and send employees home, whether due to inclement weather, a City sponsored holiday or employee event, safety considerations, in conjunction with community or City special events, or other unusual circumstances.



Should City offices be closed for any reason and administrative leave granted to City employees as a result, all public safety, public works, facilities, management and other essential personnel required to report to work regardless of the delay or closure as part of their essential duties (as may be designated by the City Manager, Department Director or outlined in their job description) will be compensated for their actual time worked, any overtime or Holiday Pay that may apply, as prescribed by the Personnel Policy or CBA, and will additionally be paid for the full amount of approved Administrative Leave granted to all other employees.

Employees that cannot make it to work due to inclement weather will be credited with the administrative leave authorized for any delayed opening or early closing and shall be charged with Annual Leave or, if no such leave has been accrued, leave without pay for all other normal work hours missed on that work day.

The City Manager may in their discretion grant up to two (2) weeks paid Administrative Leave in lieu of required notice by the employee upon separation. The City Manager may also, at their discretion, additionally authorize up to an additional two (2) weeks for service credit at separation from City employment for full-time employees not on probation, if deemed to be in the best interest of the City.

**2.28.100.070: WITNESS AND JURY LEAVE:**

Employees will be granted leave with pay when subpoenaed to appear in a Court of competent jurisdiction as a witness on behalf of the City or called to serve as a juror by a Court of competent jurisdiction. Fees received by an employee for compensation as a witness or as a juror, excluding reimbursement for mileage, shall be paid over to the City Finance Department. Upon being subpoenaed or called for jury duty, an employee shall immediately notify their Department Director and/or Supervisor. Employees must also provide a copy of the jury summons, which will be forwarded to the Human Resources Department. If possible, the employee shall state the estimated time they will be absent from work in order that necessary staffing adjustments can be made. In addition, if the employee serves on a jury or appears in court, they will need to obtain written documentation from the courts about the actual time/days spent in court proceedings to submit with their payroll records to the Finance Department/Payroll Administrator.

**2.28.100.080: VOTING LEAVE:**

Employees are allowed up to two (2) hours with pay to vote on Election Day. Time taken off for voting shall not be used for any other purpose. Voting time off, with pay of up to two (2) hours, will not be granted to any Employee whose normal work days begin more than two (2) hours after the opening of the polls or ends more than two (2) hours prior to the closing of the polls. Employees may be required to show they are registered eligible voters to qualify for voting leave.

**2.28.100.090: MILITARY LEAVE:**

- A. Military Leave with Pay. All employees of the City who are members of the Armed Forces of the United States or members of organized reserve units or the National Guard shall be entitled to a maximum of fifteen (15) calendar days of military leave with pay per federal fiscal year (The federal fiscal year is the accounting period for the federal government which begins on October 1 and ends on September 30) when called or placed on active duty or required to attend organized courses of instruction or training periods thereof. A copy of the employee's official military orders is required to be provided to the Human Resources Department prior to the commencement of such leave, and to be kept in the respective employee's personnel file. In the event an employee is called to military duty for a period beyond the fifteen (15) days allowed for military leave, the period in excess of fifteen (15) days may be charged to an employee's Personal Leave or leave without pay, at the employee's discretion. Employees on military leave with pay shall accrue personal leave.
  
- B. The Uniformed Services Employment and Reemployment Rights Act (USERRA).
  - 1. USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service. USERRA prohibits employers from discriminating against past and present members of the uniformed services, or applicants to the uniformed services, with regard to initial employment, reemployment, retention in employment, promotion, or any benefit of employment.
  
  - 2. Employees who leave City service to undertake military service, and who meet the reemployment eligibility rights under USERRA, will be restored to the job and benefits they would have attained if they had not been absent due to military service or, in some cases, a comparable job. Employees must:
    - a. Ensure that the City is given advance written or verbal notice of your service,
    - b. Have five years or less of cumulative service in the uniformed services while working with the City,
    - c. Return to work or apply for reemployment in a timely manner after conclusion of military service, and
    - d. Have not been separated from military service with a disqualifying discharge or under other than honorable conditions.
  
  - 3. Employees who leave their job to perform military service have the right to elect to continue their existing employer-based health plan coverage (personal and dependent coverage) for up to 24 months while in the military. If an employee does not elect to continue coverage during their military service, they have the right to be reinstated in the City's health plan when reemployed, generally without any waiting periods or exclusions except for service connected illnesses or injuries.

**2.28.100.100: EDUCATIONAL LEAVE:**

Educational Leave is subject to recommendation of the Department Director and the pre-approval of the City Manager on a Leave Form, and must be related to employee career advancement related to present or future job skills that may benefit both the employee and the City. Employees may be granted leave without pay or a flexible schedule to attend courses at a high school, vocational school, college or other educational institution of higher learning, or other specialized training. Full-time or part-time employees required or recommended by the City to attend classes will be paid their normal wages for all hours in attendance. Any employee attending any courses or classes as a requirement of maintaining a professional license or certificate or other specialized training required by the City will receive regular pay if pre-approved by the City Manager.

**2.28.100.110: LEAVE WITHOUT PAY (LWOP):**

A Department Director, upon recommendation and with the approval of the City Manager, or the City Manager may grant classified employees leave without pay for a period not to exceed six (6) months, when the Department Director or City Manager deems that such leave without pay is in the best interest of the City.

- A. Re-employment upon Return. If an employee returns to work within six (6) months, the employee will be returned to the same position, if possible, or a position of like classification and pay. Vacancies may be filled by Temporary Employees. Temporary employees may be hired to fill vacancies created by an employee who is on leave without pay.
- B. Benefits at Employee's Expense. An employee on leave without pay does not accrue leave, nor does the employee receive City benefits. An employee wishing to continue receiving insurance benefits may do so at the employee's expense by submitting the employee's and the City's share of the premium to the Finance Department on the regular payday.
- C. Failure to Report to Work. Employees who fail to report to work upon expiration of approved leave without pay shall be considered to have effectively resigned from their job.

## **2.28.100.120: ON THE JOB ACCIDENTS AND WORKERS COMPENSATION:**

Any Employee who suffers an on-the-job injury or illness is required, unless incapacitated, to immediately prepare and submit a Notice of Accident form to their Supervisor/Department Director and the Risk Manager. If the employee is unable to do so, the Supervisor or Department Director will fill out the Notice of Accident. Any unreported injury is grounds for disciplinary action. An Employee who suffers an on the job injury or illness that requires immediate emergency treatment and returns to work on the same workday will not be charged Sick Leave. The Supervisor/Department Director shall submit the Notice of Accident form and the required Supervisor's Investigation Report form to the Human Resources Department within seventy-two (72) hours. The injured or ill employee must sign a Worker's Authorization for Disclosure of Protected Health Information for Workers' Compensation Purposes form, and Doctor Selection Notice and submit them to the Human Resources Department. The Human Resources Department will send the forms, the Notice of Accident, and a New Mexico Workers' Compensation Administration - Employer' First Report of Injury or Illness to the New Mexico Self-Insurers Fund for evaluation. Workers' Compensation benefits will be awarded as provided by law. The injured employee must be driven by the Supervisor or Risk Manager for post-accident drug testing.

### **A. Workers Compensation Process.**

1. Employees injured on the job may choose any physician for their initial evaluation and treatment.
2. Employee and Supervisor must complete all necessary forms and submit them to the Human Resources Department as soon as possible.
3. If the employee is not able to work, the first seven (7) days after filing a Workers' Compensation claim are considered a waiting period during which no Workers' Compensation benefits are paid. The injured or ill employee will have to use Personal Leave or leave without pay, if necessary, during this period. After seven (7) days out of work, an injured or ill employee that has been approved for Workers' Compensation benefits may elect to be paid 66 2/3% of their average gross pay for the preceding twenty six (26) weeks (pursuant to Section 6.10 C Benefits at Employee's Expense), OR continue using Personal Leave. The employee's decision to receive workers' compensation benefits or to use Personal Leave while out of work must be designated on an Election of Benefits Form forwarded to the Human Resources Department. The HR Director will review this process in accordance with changed or amended laws and regulations and notify employees as to any changes to be made to this process.
4. Employees out on Workers' Compensation will also be placed on Family and Medical Leave which will run concurrently with their Worker's Compensation absence.
5. After sixty (60) days, the NM Self-Insurers' Fund can require an injured employee to be seen by another designated physician for reevaluation and treatment.

6. No Personal Leave or PERA benefits will accrue while an employee is receiving Workers' Compensation benefits.
  7. Prior to the employee's return to work, the treating physician may be requested to submit a written report, based on the employee's current job description, to the Human Resources Director, indicating the date the employee will become able to return to their position. If the employee returns without a full release from the physician to perform the essential functions of the job, the physician's report shall state what, if any, restrictions apply. An employee will not be allowed to work without a physician's release. It shall be the decision of the Risk Manager and Department Director whether or not to allow the employee to return to light or restricted duty. The Department Director shall consider what, if any, special projects might be available in allowing a restricted or light duty assignment.
- B. Reduction of Workers' Compensation. Indemnity payments (two-thirds of wages) shall be reduced by ten percent (10%) when an injury is caused by the willful failure of the employee to use safety devices provided by the City.
1. No indemnity payment shall be made to any employee whose injury was caused by the intoxication of the employee or willfully suffered or intentionally inflicted by the employee.
  2. No indemnity payment shall be made to any employee whose injury was caused solely by the employee being under the influence of a depressant, stimulant, or hallucinogenic drug as defined in the New Mexico Drug, Devis and Cosmetic Act, or under the influence of a narcotic drug as defined in the Controlled Substances Act unless the drug was lawfully dispensed or administered to the employee by a properly licensed practitioner.

**CHAPTER 2.28.110  
GENERAL WORKING CONDITIONS**

**2.28.110.010: POLICY:**

It is the policy of the City of Belen that certain rules and regulations regarding employee behavior, conduct, and work performance are necessary conditions of employment to allow efficient City operations and for the benefit and safety of all employees. Conduct, behavior and work performance that interferes with operations, discredits the City, or is offensive to the public or other employees, will not be tolerated.

**2.28.110.020: REPORTING FOR WORK:**

All employees are to be at their designated work areas on time and ready to work. They shall work until the scheduled quitting time, unless permission of the Supervisor/Department Director has been obtained for different work hours. Employees shall adhere to their work schedules with regularity and punctuality.

- A. Timesheet Attendance Records- Employees required to record hours worked on timesheets shall keep accurate records of hour worked and submit to the designated timekeeper when directed.
- B. Unsatisfactory work habits and work behavior includes failure to properly recording hours worked, departing the work area prior to the designated time, excess absenteeism, neglecting work duties/responsibilities, or wasting time during work hours, and may be grounds for disciplinary action up to and including termination.

**2.28.110.030: PERSONAL APPEARANCE:**

City employees are expected to always be dressed in a manner suitable to their employment position, to assure public safety, and in order to maintain an excellent public service environment, to wear the proper attire, and to maintain an appropriate personal appearance. The HR Director will issue written guidance from time to time detailing what constitutes appropriate and suitable attire. Employees are also expected to maintain good personal hygiene in order to maintain a good public image and foster harmonious working environments.

Employees required to wear uniforms should wear uniforms that are kept clean and neat. Uniforms bearing City of Belen identification patches or words may not be worn inappropriately at any time, except under exceptional circumstances approved by the HR Director. Upon separation from the City, any and all City issued equipment and uniform items must be returned to Supervisor/Department Director.

## **2.28.110.040: CONFLICT OF INTEREST:**

Employees must disclose promptly any circumstance that might constitute a conflict of interest or appear to be a conflict of interest. If such a situation develops, the employee must immediately notify their Department Director and complete a City of Belen Disclosure Statement Form, pursuant to the New Mexico Governmental Conduct Act (NMSA 1978, Section 10-16-1 et seq.). An employee or public official of the City of Belen is required to make disclosure of potential conflicts of interest with regards to outside employment, familial relationships, and disclosure of substantial business interests. In addition, employees must complete a City of Belen Disclosure Statement Form every twelve (12) months. Failure to complete the City of Belen Disclosure Statement Form or failure to provide complete and accurate information may subject an employee to disciplinary action and may result in any authorization to engage in self-employment, supplemental or outside employment being terminated.

### **A. No employee shall:**

1. Engage in any business or transaction, have a financial or other personal interest, direct or indirect, accept private employment or other public employment, or render services for private interest, which is incompatible with the proper performance of the employee's responsibilities, which gives the appearance of impropriety, or could tend to impair their independence of judgment or action in the performance of their duties.
2. Accept any gift, whether in the form of money, service, loan, thing, or promise, from any person that could tend to impair the employee's independence of judgment or action in the performance of their duties.
3. Disclose confidential information concerning property, government or affairs of Belen without proper legal authorization, or use such information to advance the financial or other private interest of self or others.
4. Accept any gift, whether in the form of money, service, loan, thing or promise, from any person which to their knowledge is interested directly in any manner whatsoever in business dealings with the City; provided, however, that any such employee who is a candidate for public office may accept campaign contributions and services in connection with any such campaign. Represent the private interests of any third-party in any action or proceeding before any Board or Committee before which the employee appeared on behalf of the City while an employee of the City or within one year of terminating their employment with the City.
5. Participate in the selection, the negotiation or the making of any contract with any business or entity in which he has a direct or indirect financial interest.

B. Self-Employment, Supplemental or Outside Employment.

1. The City has the right to refuse authorization or to terminate authorization to engage in self-employment, supplemental or outside employment which:
  - a. Involves the use of City time, facilities, equipment, or supplies.
  - b. Causes the employee to be less efficient in performing their duties for the City.
  - c. May cause or lead to a conflict of interest with the Belen for the employee or any of the employee's subordinates.
  - d. Involves the acceptance of any gift or gratuity whether in the form of money, service, loan, thing or promise, by the employee or any of the employee's subordinates to perform any services related to their duties or their subordinate's duties with the City.
  - e. Results in an increase in the employee's use of leave.
2. The authorization for Outside Employment may be denied in the City's sole discretion due to inadequate performance, attendance, number of hours of outside employment, perceived conflict of interest, or any other reason which the City deems necessary for the efficient operation of City government.



## **2.28.110.050: WORKPLACE VIOLENCE PREVENTION:**

The City of Belen is committed to preventing workplace violence and to maintaining a safe work environment. If the employee displays any violence in the workplace or threatens violence in the workplace, the employee is subject to immediate termination of employment. No talk of violence or joking about violence will be tolerated. The City defines "violence" to include physically harming another, shoving, pushing, intimidation, coercion, fighting, brandishing weapons, acts of bullying, stalking, assault, vandalism, unauthorized possession or use of a firearm or prohibited weapon in the workplace or during work hours, and threats or talk of violence. This list is not exhaustive, and any other acts deemed inappropriate will also be investigated. The City reserves the right to take disciplinary action against this type of behavior and conduct, up to and including termination of employment.

The City is committed to providing a safe environment for employees, residents and visitors. In order to provide a safe workplace, the City requires compliance with the following provisions:

- A. All weapons prohibited. With the exception of City Police Officers, the City will not tolerate employees being in possession of any weapons on City property and also while on work duty on other premises.
- B. Inspections. Desks, telephones, issued cell phones, computers, lockers, etc. are the property of the City and as such, the City reserves the right to enter or inspect your work areas including, but not limited to, offices, desks, lockers, issued cell phones, computers, etc. and with or without notice of inspection.
- C. Reporting Requirements. It is everyone's responsibility to prevent violence in the workplace. If an employee observes or experiences such behaviors and/or conduct, they should report it immediately to a Supervisor/Department Director. Supervisors and Department Directors shall immediately notify the Human Resources Director and City Manager. If the Supervisor or Department Director is responsible for the behavior and/or conduct, the employee should report to a non-involved Department Director, Human Resources Director and City Manager. If the employee believes the situation requires immediate action in order to avert a violent situation, the employee should contact the appropriate law enforcement agency immediately.
- D. Investigation and Findings. Any reported violation of this policy will be thoroughly investigated. The City of Belen will take appropriate disciplinary action based on the findings of the investigation. An employee whose behavior is determined to be in violation of this policy is subject to disciplinary action, up to and including termination.

- E. Training. As part of the City's commitment to preventing workplace violence, the City provides training on this policy during an employee's new hire orientation and encourages Employees, Supervisors, and Department Directors to take periodic training to learn about workplace violence prevention, conflict resolution, building effective working relationships, stress management and related or similar course topics. The City offers monthly safety training as provided by our insurance provider, New Mexico Self-Insurers' Fund. Departments should make efforts to budget for specific related training for their department work assignments, members of the public served, and needs.
  
- F. Employee Assistance Program. The City of Belen provides an employee assistance program (EAP) for all employees. The City's EAP offers free and confidential assessment, short-term counseling, prevention, crisis intervention, education, and referral services to employees and their eligible dependents. The EAP is a completely confidential service and is available 24/7, 365 days of the year to help employees and their dependents. Employees are encouraged to use the EAP whenever the employee feels the need for guidance in coping with life.

**2.28.110.060: PROHIBITED POLITICAL ACTIVITIES:**

All employees, Department Directors and Elected Officials are prohibited from:

- A. Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office, or for any other political purpose.
- B. Directly or indirectly coercing, attempting to coerce, commanding or advising a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee or organization, agency, or person for a political purpose.
- C. Threatening to deny promotions to any employee who does not vote for certain candidates, requiring employees to contribute part of their pay to a political fund, influencing subordinate employees to buy tickets to political fund-raising events and similar events, advising employees to take part in political activities and matters of a similar nature.
- D. Engaging in political activity while on duty or campaigning on City property.
- E. Displaying political stickers or posters on City owned vehicles or in any City office.
- F. Using any City owned equipment, supplies, vehicles, space or property for political purposes.
- G. Soliciting or handling political contributions or participating in any way in partisan fund-raising activities during work hours.
- H. Serving in connection with, preparation for, organizing or conducting of a political meeting on any partisan political matter, or taking any other active part therein, during work hours.
- I. Engaging in activity at the polls either during primary or general elections, such as soliciting votes, assisting voters to mark ballots, or transporting or helping voters to the polls on Election Day, unless the employee has been granted annual leave.
- J. Acting as a recorder, checker, poll watcher or challenger of any party or candidate, unless the employee is granted annual leave. Serving in any position of election officer in which partisanship or partisan political management may be shown.
- K. Writing for publications or publishing any letter or article, signed or unsigned, soliciting votes in favor of or against any political party or candidate during work hours.
- L. Initiating or circulating partisan political nominating petitions during work hours.
- M. Engaging in political caucuses, or canvassing a district, or soliciting political support for a party, faction or candidate during work hours.

- N. Serving on or for any political committee, party, or other similar organization or serving as a delegate or alternate to a caucus or party convention on the county, state or national level, during work hours.

**2.28.110.070: PUBLIC/POLITICAL OFFICE:**

A City employee who declares their candidacy for elected office must comply with the provisions of the federal Hatch Act, 5 U.S.C. Sections 7321-7328. The Hatch Act prevents any employee from running for office if the employee's job is in any way supported by federal funding.

- A. Employees covered by the provisions of the Hatch Act, 5 U.S.C. Sections 1501-1508, may not be candidates for partisan political office elections.
- B. Employees not covered by the provisions of the Hatch Act, 5 U.S.C. Section 1501-1508, may be candidates for any partisan political office and must take leave from their position with the City of Belen for thirty (30) calendar days immediately prior to the election. Personal leave may be used, if available. Leave without pay may be used, if approved under the provisions of the Leave without Pay Section 2.28.100.110.

## **2.28.110.080: DISCRIMINATION AND HARASSMENT PREVENTION:**

The City of Belen strives to provide a place of employment free of discrimination and harassment based on sex, race, religion, color, age, ancestry, national origin, sexual orientation, gender identity, genetic information, serious medical condition, disability, spousal affiliation, status as a veteran, or any protected status as defined in Title VII of the Civil Rights Act of 1964 and New Mexico Human Rights Act. All employees and job applicants are entitled to a work place or recruitment process that is free from discrimination and/or harassment. Every City employee has a responsibility to prevent discriminatory harassment (including sexual harassment) from occurring.

Discriminatory harassment within the workplace will not be tolerated. All employees are prohibited from engaging in discriminatory harassment of any other employee or other persons in the course of, or in connection with, employment. Any employee, including a Supervisor or Manager, who is found to have engaged in any form of discriminatory harassment in the course of their employment will be subject to appropriate disciplinary action, up to and including termination of employment. Disciplinary action will vary depending on the severity of the infraction. The desired standard for City employee conduct and behavior is one of cooperation, mutual respect, and professionalism.

### **A. Definitions.**

1. **Discrimination in the workplace.** Employment action or employment conditions that result in unfair or unequal treatment of an individual employee (or group of employees) based on their membership in a protected class: race, religion, sex, age, national origin, ancestry, disability, spousal affiliation, pregnancy, sexual orientation, or serious medical condition, etc.
2. **Harassment.** Any unwelcome or unwanted conduct or behavior that is based on race, color, sex, religion, national origin, ancestry, spousal affiliation, sexual orientation, serious medical condition, age, disability or other protected class and is pervasive or severe and offensive both to the recipient of the conduct and to a reasonable person.
3. **Sexual Harassment.** Form of harassment that consists of unwelcome and unwanted sexual advances, requests for sexual favors, communication of a sexual nature or other verbal or physical conduct of a sexual nature that is pervasive or severe which adversely affects a person's employment relationship or working environment and is offensive both to the recipient and to the reasonable person.
4. **Retaliation.** The act of attacking in return, as in taking revenge, reciprocating, settling a score or getting even; negative or adverse action taken against an employee/witness because they report discriminatory harassment or provide information related to such complaints.

- B. Reporting Requirements. It is everyone's responsibility to prevent discrimination and discriminatory harassment in the workplace. Any employee who believes that they have either witnessed or been subjected to any form of discriminatory harassment on the job have the obligation to take steps to prevent discrimination/harassment and report such discrimination/harassment immediately to their Supervisor and/or Department Director. Any Supervisor/Department Director who has been notified of alleged discriminatory harassment must take immediate action to stop such behavior and report the behavior to the Human Resources Director immediately. If the offender is the employee's Supervisor and/or Department Director, the employee shall report discriminatory harassment to any other non-involved Department Director or the Human Resources Director. Retaliation against an individual who in good faith reports or provides information in an investigation about behavior or conduct that may violate the policy is against the law and will not be tolerated. Failure to report allegations of harassment and sexual harassment may result in disciplinary action, up to and including termination.
- C. Investigation and Findings. Any reported violation of this policy will be thoroughly investigated. The City of Belen will take appropriate disciplinary action based on the findings of the investigation. An employee whose behavior, conduct, or actions is determined to be in violation of this policy is subject to disciplinary action, up to and including termination.

**2.28.110.090: PAY PERIODS, WORK WEEK AND BREAKS:**

- A. Employees shall be paid bi-weekly, with 26 pay periods per year. If a payday lands on a holiday, the day of pay shall be the last working day proceeding the normal payday.
- B. The designated work week is a period of time which begins at 12:01 a.m. Saturday, and ends at 12:00 midnight, the following Friday. The work week for full-time employees will normally consist of eight (8) hours per day from 8 am to 5 pm, five (5) consecutive days per week. The City Manager may approve an alternative work week. Actual work periods may fluctuate at the discretion of the Department Director. Part-time employees' work week is scheduled by their Department Director, generally for the same number of hours each week.
- C. Full-time and part-time employees take a one (1) hour lunch break. Full-time employees are entitled to two (2) fifteen minute breaks per day. Employees working four (4) hours or less per day are entitled to one (1) fifteen minute break per day. Department Directors may limit or delay breaks if continuous work is required due to an emergency or unusual conditions. No breaks shall be taken until 1.5 hours after the work day begins, or 1.5 hours before the work day ends.

**2.28.110.110: PERSONAL BUSINESS:**

Personal business shall not be conducted during work hours while on City premises. City phones and other equipment, including, but not limited to, copiers, fax machines, vehicles, etc. are to be used for City business only.

## **2.28.110.120: SAFETY AND HEALTH:**

The City of Belen strives to provide a safe and healthy work environment for all employees in accordance with all applicable state and federal laws. It is the responsibility of every employee to observe safe working conditions at all times. Violation of this policy and/or any policy in the City of Belen Safety Manual will be grounds for disciplinary action, up to and including termination. For all safety and health policy conditions and requirements, refer to the City of Belen Safety Manual.

- A. Reporting Unsafe Conditions. Employees should bring unsafe working conditions, practices or procedures of which they are aware of to the attention of the Supervisor or Department Director who is responsible for mitigating or remedying such safety hazards. If an employee believes they are being required to work under unsafe conditions, the employee shall notify their Supervisor and/or Department Director, who will immediately investigate the condition and take appropriate action. No employee will be disciplined for refusing to work under unsafe working conditions if the City has determined that the conditions are unsafe. If an employee disagrees with the Supervisor's or Department Director's determination as to the safety of the working conditions, the employee may appeal the determination to the City Manager.
- B. Notification of injury. Any employee injured on the job must immediately notify their Supervisor/Department Director and, except in the case of a serious emergency, complete an Employee Notice of Accident/Incident Report. If it is necessary for the employee to receive emergency medical care or treatment the City, through the Department Director/Supervisor, will arrange for transportation of the injured employee. The Department Director or designee will immediately notify the City Manager and Human Resources Director about the injury by calling/leaving a phone message or emailing.
- C. Emergency Care. In the event an employee is injured on the job and requires immediate emergency care, the time for the emergency shall be charged to Administrative Leave. This leave will be granted for immediate care through the end of the shift. Additional time may be approved, if necessary, on a case-by-case basis. A written Release to Return to Work from a qualified physician will be required before returning to work and must be submitted to the supervisor/Department Director, who will in turn forward a copy to the Human Resource upon receipt. In the case of on-the-job injuries, the employer reserves the right to conduct a preliminary medical investigation at the time of the incident. Drug testing may be required as per the City of Belen Personnel Policy.
- D. Early Return to Work Modified Work Assignment. An injured employee may return to work only when their treating physician or doctor releases the employee to return to work with written documentation which must be provided to the Supervisor/Department Director and Human Resources Director. An employee will be given "light duty" only when the City has light duty positions available.

## 2.28.110.130:

### **ZERO-TOLERANCE DRUG-FREE WORKPLACE AND ALCOHOL ABUSE POLICY:**

The City of Belen recognizes that on-the-job substance abuse is a pervasive problem and that drug abuse in the workplace can seriously injure the health of employees, adversely impair job performance, and endanger members of the community. Therefore, to ensure employees a healthy environment in accordance with ADA and other federal laws, the City of Belen has adopted a Zero-Tolerance Drug-Free Workplace Policy (Ord. 1996-25).

The City of Belen does not tolerate the abuse of drugs and/or alcohol and strives to maintain a workplace that is free from the effects of drug and alcohol abuse. Employees are prohibited, under the Drug-Free Workplace Act of 1988, from the illegal use, sale, dispensing, distribution, possession, or manufacture of illegal drugs, controlled substances, narcotics, or alcoholic beverages on City premises or work sites. Employees are further prohibited from possessing, distributing, selling, or manufacturing illegal drugs outside of work hours. Employees violating this policy and any provision herein are subject to disciplinary action, up to and including termination.

Employees shall **NEVER** operate City vehicles/equipment or their own personal vehicle on City business if they are impaired and not fit to drive. Impairments can be from abuse of alcohol, drug use (illegal, prescription, and over-the-counter medications), sleepiness/fatigue, headaches, vision problems, medical conditions, etc. When on-duty operation of City vehicles/equipment is necessary or job performance is impaired, it is the employee's responsibility to immediately notify their Department Director and/or Supervisor when they are impaired and not fit to drive or operate City vehicles/equipment. Department Directors/Supervisors must immediately suspend the employee from any vehicles/equipment operations or other safety sensitive work responsibilities and immediately notify the Human Resources Director in these situations. Failure to report the use of such drugs or other substances which can impair job performance will result in disciplinary action.

- A. Sale, Use and Possession of Drugs. Any employee who illegally sells, purchases, or transfers drugs or any illegal substance, on or off duty, shall be terminated. Any employee who, while on duty, possesses drugs or any substance in Schedules I and II of the Controlled Substances Act, Section 30-31-41 NMSA 1978, without a valid prescription or as otherwise authorized by law, shall be terminated.
- B. Alcohol. Any employee who is caught consuming alcohol while on duty shall be terminated.
- C. Employee Cooperation. All employees are expected to cooperate in the drug testing process. Any conduct that clearly obstructs the drug testing process, such as tampering with the specimen or the testing procedure, will result in termination of employment.
- D. Call Back Duty. Employees called back to work at a time when they are off from work and not on On-Call duty status, and have been consuming intoxicants, shall report this usage to the person calling them to return for special duty. The person receiving the notification from the employee shall promptly notify the requesting Supervisor/Department Director.



- E. Drug Testing. All employees are subject to pre-employment, and post-vehicle accident drug testing.
- F. Categories for Drug and/or Alcohol Testing.
1. Post-Offer/Pre-Employment Testing. Prior to employment, the applicant or employee must submit to testing for alcohol and controlled substances. The City shall not employ an individual if they refuse to submit to the drug/alcohol testing or the results indicate a positive drug test result.
  2. Post-Accident Testing. After an accident/incident while on duty or in a City vehicle, an employee is required to submit to a drug and/or alcohol test. The employee will be driven to the collection site by the Department Director, Supervisor or designee. Refusal to submit to the drug/alcohol test will be regarded the same as a positive drug test result or blood alcohol content greater than .04 and the employee shall be subject to disciplinary action.
  3. Reasonable Suspicion Testing. An employee shall be required to undergo a drug/alcohol test if there is a reasonable suspicion that the employee is under the influence of alcohol or drugs. The Department Director or a designated Supervisor will accompany the employee to the collection site for testing. Results will be reported to the Human Resources Department after review and certification by the MRO. Refusal to submit to a drug or alcohol test shall be deemed cause for immediate termination. Circumstances which constitute a basis for determining "Reasonable Suspicion" may include, but are not limited to:
    - a. A pattern of employee behavior problems, such as declining work performance, argumentative, uncooperative, disruptive behavior, or display of abnormal or erratic behavior (emotional outburst, excessive energy or lethargy, mood swings);
    - b. Information provided by a reliable and credible source (with written documentation of when and how information was obtained/observed); Direct observation of drug or alcohol use; or
    - c. The presence of typical physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, sleeping on the job, and/or poor coordination and reflexes).
    - d. Employees who believe that another City of Belen employee is under the influence of alcohol or drugs should immediately report the incident to the Supervisor/Department Director. If they are not available, or in the event of immediate danger, contact local law enforcement.

- e. The City of Belen Supervisor/Department Director will respond immediately to any report of suspected intoxication or drug/alcohol use on City premises/work site during working hours, by investigating the report, enforcing the 'reasonable suspicion' drug testing procedure, and taking appropriate corrective and disciplinary action up to and including termination of an employee engaged in such behavior, if necessary.

G. Positive Test Results. All employees who test positive for drugs or alcohol will be terminated.

H. Voluntary Self-Referral. The City strongly encourages any employee who believes or suspects that they may have a problem with drugs and/or alcohol to seek help from the Human Resources Department and EAP prior to any mandated drug and alcohol testing. The initial EAP screening is free to any employee. Any costs for required additional treatment shall be borne by the employee. Voluntary self-referrals may use personal leave and unpaid administrative leave in order to complete the EAP. Self-referrals must be cleared to return to duty within ninety (90) calendar days of entering the EAP program or they may be terminated.

**CHAPTER 2.28.120  
EMPLOYEE CONDUCT**

**2.28.120.010: POLICY:**

Employees are expected at all times to conduct themselves in a positive manner in order to promote the best interests of the City and to maintain high standards of cooperation, efficiency and integrity in their work performance. Employees shall deal with the public and all City employees with courtesy, diligence, and promptness. Supervisors and Department Directors are responsible for providing leadership and mentoring that creates an opportunity for employees to achieve professional standards of performance and conduct and, at the same time, holds employees accountable for their actions. Appropriate City of Belen employee conduct and behavior expectations includes but is not limited to the following areas. Employees are expected to:

- A. Perform job duties, responsibilities and assigned tasks in accordance with management expectations, established quality standards, and in a manner that reflects the highest ethical and professional standards. Employees shall carry out direct and appropriate work instructions/assignments from their Supervisor/Department Director and shall comply with these rules and regulations;
- B. Create a harmonious work environment for co-workers, supervisors/management, and the public by maintaining a positive, cooperative and helpful attitude; and be willing to get along with others and communicate respectfully with each other. Each employee has a role and responsibility to support a productive and healthy workplace;
- C. Support teamwork and workplace behavior that fosters collaboration, customer service, and working for the good of the Department and the City of Belen. Be receptive to constructive feedback; be open to input from your co-workers, Supervisors/Department Directors, City Administration and the public;
- D. Cooperate fully and in a timely manner with City investigations and provide truthful information in all statements and testimony; refrain from fraud, falsification, deceit, theft or departing from the truth;
- E. Promote cooperation and collaboration by following the chain of supervision, policies and procedures in attempting to resolve any workplace issues or problems;
- F. Report to management any suspicious, threatening, or potentially violent, unsafe, illegal immoral or unethical behavior or conduct by coworkers, customers, contractors, or suppliers;
- G. Report to work as scheduled, ready for work and not unfit, hung-over, fatigued or impaired due to the use of alcohol or other controlled substances;
- H. Comply with all City, State and Federal safety rules, policies, procedures, and regulations; wear the proper safety attire and equipment and notify Supervisor(s) immediately when replacements are needed or equipment is missing;

- I. Never engage in unauthorized or personal use of City vehicles or equipment; never allow unauthorized passengers in City vehicles/equipment or while operating a City vehicle. Authorized passengers shall be determined by the City Manager;
- J. Never falsify or alter any City records or reports, such as time and attendance sheets, employment applications, personnel records, travel and expense reports, or other organizational records;
- K. Refrain from behavior or conduct that is offensive or undesirable, or which is contrary to the best interest of the City, your Department or the public;
- L. Refrain from engaging in malicious and disorderly conduct, force, threats of use of force, theft, misappropriation, destruction of public or private equipment, tools, vehicles or property, abuse or waste of public and/or private property, engaging in actions that create the appearance of impropriety, use of obscene language and other inappropriate conduct while engaged in the performance of their job, while representing the City, while wearing a City uniform or driving a City vehicle or where such conduct reflects adversely on the image of the City. City uniforms and clothing with City logos should only be used while officially on-duty or on-call;
- M. Never refuse to follow management's lawful instructions and direction concerning a job-related matter or be insubordinate; and refrain from creating or contributing to an unproductive work environment through encouraging bad morale, undermining Supervisors or the chain of command;
- N. Hold any confidential information or communication derived through their City employment in the strictest confidence and shall not share, reveal or use such, unless it is subject to public disclosure, necessary to conduct City business, or to prevent death or serious bodily harm/injury. Disclosure should be through approved City channels and policies, such as IPRA or the Mayor-appointed City Public Information Officer;
- O. Report the loss of a driver's license or other required license or certification in writing to the Human Resources Department within two (2) work days; and report criminal charges and/or conviction of criminal charges or motor vehicle accidents impacting driver safety status with the City in writing to the Human Resources Department within two (2) work days;
- P. Never steal, destroy, deface, damage, or misuse City property, equipment, vehicles or another employee's property;
- Q. Never use profanity, offensive or obscene language; never fight, gamble, sleep on the job, encourage a fight, participate in playing pranks or engage in horseplay or other behavior or conduct unbecoming a City employee;
- R. Never engage in harassment, discrimination, or retaliation.

**CHAPTER 2.28.130**  
**CLASSIFIED EMPLOYEE DISCIPLINE**

**2.28.130.010: DISCIPLINE POLICY:**

It is the policy of City of Belen that disciplinary action should be taken only when all reasonable efforts to improve performance have been unsuccessful or when the actions or omissions of an employee require formal discipline. Supervisors are expected to use all the tools and skills at their disposal to correct performance problems before formal discipline is required. These tools and skills include, but are not limited to: coaching, counseling, training, use of evaluations and corrective action plans.

**2.28.130.020: DISCIPLINE PROCESS:**

Due process will be observed in the disciplinary process defined by this section. Before initiating any disciplinary action, Supervisors and Department Directors shall communicate with the Human Resources Director about the issues and evidence warranting disciplinary action.

A. Written Notice. The initiation of discipline begins with the Supervisor, Department Director or Human Resources Director notifying an employee in writing that they are investigating a situation that may result in disciplinary action (“Target Letter”). Written notice will also be given within ten (10) working days after the completion of a formal investigation, if any.

B. Supervisor Action. Within five (5) working days of the Written Notice, the Supervisor, Department Director, or Human Resources Director shall make a discipline decision and:

1. In the case of a Verbal Reprimand. Complete a City of Belen Corrective/Disciplinary Action Report indicating a Verbal Reprimand and attach all supporting documentation. The employee will have the opportunity to sign the report acknowledging receipt. If the employee refuses to sign, a witness will sign acknowledging that the employee did receive a copy of the report. The employee will be given a copy of the report, including all supporting documentation. The original of the report and all supporting documentation will be placed in the informal file maintained by the employee's supervisor. A copy of the report and all supporting documentation will be provided to the Human Resources Director, but will not become part of the employee’s official personnel file.

2. In the case of a Written Reprimand.

A. Complete a City of Belen Corrective/Disciplinary Action Report indicating a Written Reprimand and attach all supporting documentation. The employee will have the opportunity to sign the report acknowledging receipt. If the employee refuses to sign, a witness will sign acknowledging that the employee did receive a copy of the report. The employee will receive a copy of the report, including all supporting documentation. The original of the report and all supporting documentation will be forwarded to the Human Resources Department for inclusion in the employee's official personnel file. A copy of the report and all supporting documentation will be placed in the employee's informal file maintained by their Supervisor.

B. Request for Removal. An employee may request that a Written Reprimand be removed from their official personnel file after eighteen (18) consecutive months of discipline free performance. The request must be made in writing to the City Manager and endorsed by the employee's Department Director. The City Manager at their own discretion accepts, modifies or denies this Request within 10 business days and provide its decision to the requested employee.

3. In the case of recommended Suspension, Demotion or Termination.

A. Complete a City of Belen Corrective/Disciplinary Action Report indicating a recommended Suspension, Demotion or Termination and attach all supporting documentation. The employee will have the opportunity to sign the report acknowledging receipt. If the employee refuses to sign, a witness will sign acknowledging that the employee did receive a copy of the report. The entire report and supporting documentation will be forwarded to the Human Resources Director for review and submission to the City Manager for action. The City Manager will schedule a Disciplinary Pre-Determination Meeting to consider the recommended discipline.

B. Scheduling the Pre-Determination Meeting. Within five (5) working days of receipt of a City of Belen Corrective/Disciplinary Action Report and all supporting documentation from the Human Resources Director recommending Suspension, Demotion or Termination, the City Manager or their designee will schedule a Pre-Determination Meeting. The City will normally be represented at the Meeting by the City Manager and the Department Director. The City Attorney may also attend. The employee may have representation at their own expense at the Meeting, but the employee's attorney shall follow the City Manager's directives at the hearing. At the Meeting, the employee will have the opportunity to respond to the proposed disciplinary action. If the employee elects not to be present at the Meeting, the disciplinary action recommended will still be evaluated at that time by the City Manager.

C. City Manager Decision. The City Manager will make a decision within five (5) working days of the Pre-Determination Meeting. The City Manager's written decision will be attached to the City of Belen Corrective/ Disciplinary Action Report and it and all supporting documentation will be returned to the Human Resources Director for action. The Human Resources Director will implement the City Manager's decision. The original copy of the report and all documentation will be placed in the employee's official personnel file. A copy of the report and all documentation will be given to the employee. A copy of the report and all documentation will be returned to the Supervisor to be placed in the employee's informal file. Disciplinary decisions against employees may not be appealed unless otherwise provided in the applicable CBA.

**CHAPTER 2.28.140  
DISPUTE RESOLUTION**

**2.28.140.010: POLICY:**

Classified employees subject to a CBA require a formal process for resolving disputes. However, classified employees should attempt to resolve any dispute before filing a formal request for dispute resolution. All parties should make a written record of attempts to informally resolve a dispute. If a satisfactory informal resolution cannot be reached, the employee may file a formal Request for Dispute Resolution.

**A. 2.28.140.020: FORMAL DISPUTE PROCEDURES:** Department Director Level. A formal Request for Dispute Resolution must be presented in writing to the employee's Department Director, with a copy to the Human Resources Director. The formal Request for Dispute Resolution shall set forth:

1. The employee's name, job title, and worksite;
2. Their address, email address and telephone number; A description of the problem or problems;
3. The relief or resolution requested;
4. The signature of the employee.

The Department Director shall, in consultation with the Human Resources Director, respond in writing within five (5) working days of receipt of the Request for Dispute Resolution, and may within this same period, request a meeting to discuss the Dispute and seek a resolution. If the Dispute is not satisfactorily resolved at this level, it may be filed with the City Manager within five (5) working days after receipt of the written response or expiration of the time for response by the Department Director.

**B.** City Manager Level. If the Dispute has not been satisfactorily resolved by the Department Director, the employee may submit the Dispute to the City Manager. The City Manager shall respond in writing within ten (10) working days of receipt of the Dispute and may within this time period, request a meeting to discuss the Dispute and seek a resolution. The City Manager's decision will be final and binding.

**2.28.140.030: CONDITIONS OF ACTIONS WHICH MAY NOT BE DISPUTED:**

The following matters are not subject to Dispute Resolution:

- A. Disputes as to whether or not a City practice or policy is good.
- B. Matters in which a method of review is mandated by law.
- C. Matters where the City is without authority to act or does not have the ability to provide a remedy.
- D. Temporary or Seasonal employees, program paid volunteers, volunteer fire fighters, and/or Other Government Funded employees released prior to or at the end of their anticipated employment period.
- E. An action taken against any unclassified employee.
- F. Actions taken as a result of proven charges of discrimination based on race, color, national origin, religion, age, sex, ancestry, physical or mental handicap, serious medical condition, sexual orientation, spousal affiliation, or gender identity.
- G. Preferences for employment, promotions, transfers, temporary assignments, removal from temporary assignments and lay-offs.
- H. Termination of a probationary employee prior to the end of their probation.
- I. Letters of complaint from the public which a supervisor determines to be justified and appropriate to be placed in the employee's official personnel file.
- J. Any actions taken under Section 2.28.110.130 Drug and Alcohol Abuse in this Personnel Policy.
- K. Any specific discipline handed down under Section 2.28.130.010 EMPLOYEE DISCIPLINE in this Personnel Policy. Several levels of appeal are provided within the classified employee discipline process.
- L. Performance evaluations.
- M. Denial of Sick Leave Donation requests.
- N. Appointed exempt employees dismissed at any point during their employment.



**CHAPTER 2.28.150  
GRIEVANCE PROCEDURE**

**2.28.150.010: PURPOSE:**

For all grievances involving the union and/or members of the collective bargaining unit, the grievance procedures agreed to and reflected in the Collective Bargaining Agreement will be followed. There shall be no other grievance or appeal procedure on any matter for the members of the collective bargaining unit other than that contained in the Collective Bargaining Agreement.

**CHAPTER 2.28.160  
WHISTLEBLOWER PROTECTION**

**2.28.160.010: WHISTLEBLOWER PROTECTION:**

Employees shall have the right, without interference or fear of penalty or reprisal, to disclose in good faith to internal auditors, Inspectors General, or other appropriate governmental authorities information that may evidence improper governmental activity, including, but not limited to, action that is in violation of any state or federal law or regulation, action that is economically wasteful, or action that involves gross misconduct, or conditions that may threaten the health or safety of employees or the public. This provision does not protect or entitle an employee to leak or otherwise disclose confidential or City information to the press, public or other non-governmental or law enforcement agencies in violation of City policies for the public obtaining such information through legal means, such as the Inspection of Public Records Act (IPRA).