

# Personnel Policies And Procedures



## EMPLOYEE HANDBOOK

**Mission Statement:** The Arkansas Department of Education provides leadership, support, and service to school, districts, and communities so every student graduates prepared for college, career, and community engagement.



**Arkansas Department of Education**

Revised January 2023



## **EMPLOYEE HANDBOOK PERSONNEL POLICIES AND PROCEDURES**

I, \_\_\_\_\_, acknowledge I have been provided and received directions on how to access the Arkansas Department of Education (ADE) Employee Handbook Personnel Policies and Procedures (Handbook) on the ADE Intranet site at <https://adeemployees.arkansas.gov/Default.aspx?ReturnUrl=%2fPages%2fams%2f> and that I am responsible for knowing the contents of the Handbook.

The Handbook is an informational guide to employment benefits, policies, guidelines, regulations and salaries. It may not explicitly describe or define all eligibility requirements for benefits. Employees are encouraged to ask the Human Resources Office concerning any questions they might have regarding information in this Handbook.

I further understand that the Handbook is a guide, not a contract and does not create a contract with the Department for any purpose and that the provisions of this Handbook may be modified or eliminated at any time.

Signed: \_\_\_\_\_  
(Print) (Signature)

Division/Section/Unit: \_\_\_\_\_

Date Received: \_\_\_\_\_



January 10, 2023

Dear Arkansas Department of Education Employee:

Welcome to the Arkansas Department of Education (ADE). ADE is committed to providing the best support and education to every student in the state of Arkansas. That effort cannot be accomplished without the help of all employees within ADE, including you. We are providing you with this employee handbook that outlines some of the most important personnel policies and procedures for ADE. The purpose of the employee handbook is to ensure that every employee understands our expectations and obligations. Please use this Handbook as your guide to important information at ADE. Read it thoroughly and refer to it often if you have any questions.

For a full list of the ADE policies and procedures, visit the ADE Intranet under HR Forms and Policies. Also, to review State Personnel Policies, visit [Transformation and Shared Service](#). You may also contact your supervisor or the Office of Human Resources if you have any questions regarding any policy, procedure, or content in the Employee Handbook. It is our intention to assure employees of fair and equal treatment.

As we work side by side with the community, parents, and all educators, every position within ADE plays a vital role in ensuring the success of our students. This success can be accomplished using the blueprint set forth in the Arkansas LEARNS Act. Every position within ADE plays a role in implementation of the Arkansas LEARNS Act. Your supervisor will share more information with you about your role.

Again, I welcome you to ADE, and I look forward to working with you to ensure the success of every student in Arkansas.

Sincerely,

A blue ink signature of Jacob Oliva, written in a cursive style.

Jacob Oliva  
Commissioner of Education  
Cabinet Secretary, Arkansas Department of Education

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# INTRODUCTION TO THE EMPLOYEE HANDBOOK

The Handbook was developed to provide a summary of useful topics to assist new staff with their understanding of ADE's vision, mission, culture, expectations, and benefits. This Handbook will also be helpful to our current staff since it provides a comprehensive source for updated information related to ADE employment.

This Handbook will help you to become familiar with ADE policies and procedures. Should you have any related questions or need personnel assistance, please contact ADE's Human Resources Office staff at 501-682-2744.

The policies presented here originate from the Transportation and Shared Services (TSS), Office of Personnel Management (OPM), but apply to all state employees. OPM has the overall responsibility of administering the state's personnel system and establishing necessary policies, procedures, and regulations to ensure system uniformity in accordance with state and federal law. OPM offers diversified personnel service programs to all state agencies and institutions of higher education to assist in the achievement of human resource management goals and objectives.

Much of the material in the Handbook is summarized, excerpted, or paraphrased, so the Handbook is a guide rather than a complete source of information on employment-related subjects. Whenever possible, the source of the information is cited and additional details can be found in the TSS – OPM Policy and Procedures, federal and state laws and other documents referred to in the Handbook. If you need help in locating any of these source documents, please ask the staff in the Human Resources Office. The Handbook is accessible in electronic format through ADE Intranet Site at <https://adeemployees.arkansas.gov/Pages/> and may be downloaded, stored, or printed as needed.

ADE staff will be responsible for reading the entire Handbook and all subsequent updates.

If any portions of this Handbook are found to be in contradiction with state or federal laws, the laws and regulations will supersede any information/provisions of the Handbook.

The staff in the Human Resources Office has the authority to interpret Human Resources policies and reserves the right to change, amend or terminate any of its policies at any time for any reason, with or without notice. Under no circumstances are the statements contained in these documents to be considered a contract of employment, an obligation, or guarantee on the part of the Department.

ADE in its sole discretion may at any time and without notice unilaterally edify, interpret, suspend, add, change, deviate from, revoke or delete, in whole or in part, any of the provisions in this Handbook or policies, plans, procedures, programs, practices or benefits, except as expressly prohibited by statutes or personnel rules.



# Arkansas Department of Education

## Employee Policies and Guidelines

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## **SECTION I – EMPLOYMENT POLICIES AND STATEMENTS**

### **1.1 Equal Employment Opportunity Policy Statement**

The Arkansas Department of Education is an equal employment opportunity employer. In keeping with this, ADE shall follow the spirit and intent of all federal, state and local employment laws. The State of Arkansas does not discriminate in access to employment opportunities or in employment or practices on the basis of race, color, religion, sex, national origin, age, disability, or genetic information. Decisions regarding recruitment, hiring, promotions, demotions, job assignments, transfers, working conditions, scheduling, benefits, wage and salary administration, disciplinary action, terminations and social, educational and recreational programs, or any other term or condition of employment are based solely on the qualifications and performance of the employee or prospective employee.

Discrimination by an officer or employee based upon race, creed, religion, national origin, age, sex, or gender is grounds for dismissal. When it is determined by any court of law that an employee is guilty of discrimination, such determination is grounds for dismissal from employment. If any employee or prospective employee believes they have been treated unfairly, they have the right to address their concern with their immediate Supervisor, their Assistant Commissioner, Deputy Commissioner of Education, Assistant Commissioner of Fiscal and Administrative Services, or the Human Resources Manager.

### **1.2 At-Will-Employer**

ADE is an “at-will” employer. Nothing in this Handbook or policies and procedures establishes, constitutes, or implies an employment contract, the guarantee of employment or benefits, or employment for any specific duration. Nothing contained in ADE policies, Handbook, applications, or other documents, or the granting of any interview or the placement in a probationary status or any other administrative act, creates a contract between an individual and ADE for either employment or the provision of benefits. ADE does not guarantee continued employment for any specific period of time and employment can be terminated with or without cause and with or without notice, at any time, at the option of either ADE or the employee. Individuals hired will be required to provide proof of eligibility to work in the United States pursuant to the Immigration Reform and Control Act of 1986.

### **1.3 Non-Discrimination Policy**

ADE prohibits discrimination on the basis of race, color, religion, creed, sex, age, marital status, national origin, mental or physical disability, political belief or affiliation, veteran status, sexual orientation, genetic information and any other class of individuals protected from discrimination under state or federal law in any aspect of the access to employment and application for employment. Furthermore, ADE policy prohibits harassment of employees, i.e., racial harassment, sexual harassment and retaliation for filing complaints of discrimination.

ADE is committed to compliance with Title VII of the Civil Rights Act of 1964, Title VI of the Equal Pay Act of 1963, Executive Order 11246 (1965), the Americans with Disabilities Act of 1990, the Vietnam-era Veterans Readjustment Act of 1974, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act of 1967, the Family and Medical Leave Act of 1993.

Violations of these policies will result in disciplinary action, up to and including discharge. Employees who feel they have been subject to discrimination, harassment or disrespect as prohibited above, should file a complaint pursuant to ADE’s Dispute Resolution (Grievance Procedure).

## 1.4 Harassment

To define workplace anti-harassment, anti-discrimination, and no retaliation policy and outline procedures for filing complaints, investigating claims, and administering appropriate corrective action. This policy prohibits discrimination, harassment (in any form including sexual harassment), and retaliation in all aspects of hiring and employment, including but not limited to:

- Hiring and Firing
- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, or recall
- Recruiting
- Testing
- Use of agency facilities – including restrooms, break rooms, company activities, etc.
- Benefits – including retirement plans, medical plans, leave plans, training, etc.

Harassment based on any protected category is unlawful. Harassment, discrimination and retaliation are prohibited practices and are not tolerated at ADE.

The policy of ADE is to provide an employment environment free from harassment, discrimination, and retaliation. Federal law and Arkansas law provide protection from any type of harassment or discrimination, including inappropriate conduct or comments based on age (40 and over), race, national origin, ethnicity, ancestry, religion, sex (including pregnancy and gender), gender identity, sexual orientation, disability (mental or physical), veteran or military status, or other protected categories. These categories are protected by Title VII of the Civil Rights Act of 1964 and other Federal laws. Those who engage in harassment, discrimination, or retaliation may be subject to legal consequences, including civil and criminal penalties, monetary damages, and/or disciplinary action. Any employee who believes that he or she is being discriminated against is encouraged to follow the complaint procedures outlined below.

The unwelcome behavior may be based on power differentials, the creation of a hostile environment, or retaliation for harassment or discrimination complaints. Harassment and/or discrimination by employees and ADE customers, clients or visitors is prohibited by this policy.

Employee complaints of harassment must be reported to the ADE Human Resources Director. Due process will be afforded any employee accused of harassment. On receipt of a complaint, an immediate investigation will be conducted by the Human Resources Director to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If it is determined that harassment occurred, ADE will take corrective action. Violations of this policy may result in disciplinary action up to and including termination for employees and appropriate sanctions against ADE customers, clients or visitors. This policy applies to prohibited conduct that occurs on property owned or leased by ADE as well as any meetings, conferences or ADE-sponsored events.

## 1.5 Americans with Disabilities Act (ADA)

The [ADA Act](#) (42 U.S.C. § 12.101 et.seq.) of 1990 is a civil rights act prohibiting discrimination against individuals with disabilities in the offer or conditions of employment and in the participation or furnishing of services. It does not guarantee equal results, establish quotas, or require preferences favoring individuals with disabilities over those without disabilities. The [ADA Amendments Act](#)

(ADAAA), effective January 1, 2009, was adopted to restore the original intent of the ADA by providing a clear and comprehensive national mandate for the elimination of discrimination and help tap an under-utilized employee population.

The ADA and ADA Amendments provide protection for people with a disability from discrimination in any employment action and requires an employer to make reasonable accommodations to aid the individual to perform the essential duties of the job.

To be considered disabled under ADA, a person must have a physical or mental impairment that substantially limits one or more major life activities; have a record of such impairment; or be regarded as having such impairment. Additionally, to be covered by ADA, a person with a disability must be otherwise qualified for the job, program or activity to which access is sought.

Under ADA, employment decisions must be based on an individual's ability to perform the essential functions of a position with or without reasonable accommodation. ADE is not required to make accommodations that would eliminate the essential functions of the job or impose an undue hardship on the operation of ADE. Under ADA, for the purposes of providing reasonable accommodation, the State of Arkansas as a whole is considered the employer and not individual agencies.

If the employee has a disability and needs an accommodation to perform his/her job duties or to receive any regular benefit or condition of employment, the employee should make the request to his/her supervisor verbally, in a written note or memo, or by using a special form. Any other person may assist in making this request.

The law defines essential job functions as those fundamental tasks of a job, reasonably defined by the employer; and reasonable accommodations as those changes in facilities or policies that enable an otherwise qualified person to perform the essential job functions. An accommodation is considered reasonable and is required if it effectively allows the person to perform the essential job tasks, while not placing an undue hardship on the employer.

The ADA and the ADA Amendment Act provides protection for the employer from making accommodations that are unreasonable or detrimental, operationally or fiscally. ADE is not required to create a position as an accommodation or to shift duties from the person with a disability to another staff member resulting in an increased workload for that employee. For additional information about the program, please contact the Human Resources Office.

## **1.6 Disclosure of Health Information**

Employee health records maintained by ADE will only be disclosed outside ADE as required by law.

## **1.7 Conflict of Interest**

Employees have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest and shall adhere to the applicable state laws governing ethical

## **1.8 Disclosure of Information**

All public records maintained by ADE are subject to release under the Arkansas Freedom of Information Act (FOIA). For additional information regarding FOIA, please contact ADE Legal Services.

## 1.9 Hiring Relatives Reference

Arkansas Law prohibits the hiring of relatives by public officials and prohibits ADE employee's from supervising a relative. Relative is defined as:

husband, wife, mother, father, stepmother, stepfather, mother-in-law, father-in law, brother, sister, stepbrother, stepsister, half-brother, half-sister, brother-in-law, sister-in-law, daughter, son, stepdaughter, stepson, daughter-in-law, son-in-law, uncle, aunt, first cousin, nephew, or niece.

Within ADE, no relatives of employees shall be placed within the same line of supervision whereby one relative is in a supervisory position over the other. A temporary change in supervision resulting in the supervision of a relative will not be considered a violation of ACA § 25-16-1001, provided the supervision does not exceed 30 days. No hiring, firing, pay adjustments or other personnel actions may occur during this temporary period of supervision.

### Married State Employees

Employees working for the ADE who plan to marry must both complete the [Marriage Disclosure Form](#). The employees must submit the form to the ADE Human Resources Office for review and approval. Failure to complete this form may subject the employees to termination for non-compliance.

If the marriage will result in a violation of the Arkansas law prohibiting relatives from working within the same line of supervision whereby one relative is in a supervisory position over the other, the ADE Commissioner or his designee shall provide written notice of the following alternatives to resolve the violation:

1. Transferring one of the employees to another position within the ADE;
2. Transferring one of the employees to another agency; or
3. The resignation of one of the employees.

The employees have the opportunity to choose among the alternatives; however, there is no guarantee that a position will be available within the employee's current agency, or another agency. If the employees are unable to agree upon an alternative within 60 days, the agency director or their designee shall choose from the alternatives to correct the violation.

Agencies must inform employees of the law by written notification of the rules, inclusion of the rules in the agencies employee handbook and/or inclusion in new employee orientation programs.

The nepotism section of the State of Arkansas Employment Application shall be completed in its entirety listing the name, relationship, and job title of all relatives currently employed by the state agency for which application of employment is being submitted. The Human Resources Office of the agency or institution will then decide if the hiring of the applicant is in violation of this law.

If an employee of ADE suspects a violation of this law has occurred, they may submit a completed Violation of Hiring Practices/Supervision of a Relative form to OPM for a determination of whether a violation has occurred. OPM will report violations to the Attorney General's Office for resolution.

This law does not apply to an employee who was hired, transferred or promoted in a state agency prior to August 12, 2005.

### Penalty

Anyone who approves a position and authorizes compensation to an employee in violation of this law will be charged with a Class "A" misdemeanor. A public official who knowingly violates this law is subject to a civil penalty of \$1,000.

## **1.10 Immigration Reform Control Act**

ADE is committed to meeting its obligations under United States immigration law. The Immigration Reform and Control Act of 1986 mandates all employers maintain records documenting the identity and eligibility to work of all regular and temporary employees hired after November 6, 1986. Form I-9 is used for verifying the identity and employment authorization of individuals hired for employment in the United States.

## **1.11 Veterans Preference**

In compliance with Ark. Code Ann. §§ 21-3-302 and 303 of the State Veteran's Preference Law, ADE gives preference in appointment and employment for certain qualified veterans, their spouses, or the surviving spouse of a deceased qualified veteran in hiring and employment.

An applicant must voluntarily submit official proof of his or her status as a veteran, disabled veteran, spouse or a surviving spouse of a deceased veteran to receive veteran's preference. Veteran's preference does not apply to elected officials or political appointees or to any person holding a strictly confidential administrative or secretarial position in relation to the appointing officer.

In compliance with Ark. Code Ann. §§ 21-3-302 and 303 of the State Veteran's Preference Law, ADE gives preference in appointment and employment for certain qualified veterans, their spouses, or the surviving spouse of a deceased qualified veteran in hiring and employment.

### **Specific Provisions**

For purposes of this section, "veteran" means:

1. A person honorably discharged from a tour of active duty, other than active duty for training only with the armed forces of the United States; or
2. Any person who has served honorably in the National Guard or reserve forces of the United States for a period of at least six (6) years, whether the person has retired or been discharged or not.

Veteran's preference shall be applied if the applicant:

1. Indicates that he or she is a veteran, disabled veteran, or surviving spouse of a deceased veteran and the spouse is unmarried at the time of application and remains unmarried until the decision to hire is made;
2. . Is a citizen and resident of this state; and
3. Has substantially equal qualifications of the other applicants.

An applicant entitled to preference shall not be disqualified from holding any position due to age or by reason of any physical disability, provided that the age or disability does not hinder the applicant's ability to properly perform the duties of the position for which he or she applied.

### **Subject to numerical scoring**

The total number of points assigned to an examination, evaluation or similar instrument is determined by ADE; however, the number should not be so great that it renders the veterans preference points as meaningless.

### **5 points**

If ADE uses an examination, evaluation, or similar instrument subject to numerical scoring to establish a list of qualified candidates to be interviewed for a position and an applicant entitled to a veterans preference receives a passing grade, the applicant shall have 5 points added to his or her final earned rating.

## **10 points**

Disabled veterans, veterans over the age of 55 who are disabled and entitled to a pension or compensation under law, or the spouse of a disabled veteran whose disability disqualifies him or her for selection shall have 10 points added to his/her final rating score on the examination, evaluation or similar instrument. The disability must be established by the United State Department of Veterans Affairs records.

## **Not subject to numerical scoring**

If ADE uses an examination, evaluation, or similar instrument that is not subject to numerical scoring, then the selection authority must demonstrate how veteran's preference was applied in developing a list of qualified candidates to be interviewed and in selecting the successful candidate.

## **Interview list**

Applicants who qualified in an examination, evaluation, or similar instrument given for the purpose of establishing an interview list will be placed on the list in the following order:

- Names of 10 point preference eligible candidates will be placed at the top of the list of persons certified as having equal eligibility points;
- Names of 5 point preference eligible candidates shall be placed at the top of the list of persons certified as having equal eligibility points; and
- Names of all other eligible candidates who do not have preference as provided in this section shall be placed on the list according to their ranking of eligibility points.

## **Failure to interview and/or hire a veteran**

If a veteran is not selected for a position and numerical scoring was used, at the veteran's request the selection authority shall provide the veteran with his or her base score, adjusted score, and the successful candidate's score.

If a scoring method other than numerical was used, at the veteran's request the selection authority must provide all documentation to the veteran to demonstrate how the veteran's preference was applied to develop the interview list and select the successful candidate.

The selection authority or hiring official must submit the reason(s) to the veteran in writing. The written reason will become a part of the employment application records of ADE and be retained for the same period of time as all other employment applications as established by law or ADE policy.

The selection authority is not required to provide the veteran with testing materials or any other information concerning the successful candidate or other applicants that is not authorized for release under the Veterans Preference Law or the Freedom of Information Act.

## **1.12 Compliance with Military Selective Service Act**

The Federal Selective Service System is a means by which the United States maintains information on those potentially subject to military conscription. Most male U.S. citizens between the ages of 18 and 25 are required by law to have registered with the Selective Service System within 30 days of their 18th birthday.

No person who is required to register with the Selective Service System shall be eligible for employment by ADE, institution of higher education of the State of Arkansas or for admission to any public institution of higher education, unless the person has signed a statement of selective service status.

## **Specific Provisions**

A male applicant between the ages of eighteen (18) and twenty-five (25) seeking employment with the

State of Arkansas shall be registered with the Selective Service System.

An applicant is not required to register with the Selective Service System if the person is:

under eighteen (18) years of age; In the United States armed forces on active duty, other than in a reserve or national guard unit; An alien lawfully admitted to the United States for so long as he or she continues to maintain a lawful nonimmigrant status in the United States; A permanent resident of the trust territory of the Pacific Islands or the Northern Mariana Islands; or Excused from registration for other reason provided by federal law and that reason is included in the certificate.

For more information, see the Selective Service System website at <https://www.sss.gov/>

## **SECTION II – DEFINITIONS OF EMPLOYEE STATUS**

### **2.1 Employee**

A person employed in a legislatively authorized position either on a full or part-time basis, including exempt and non-exempt, regular full-time, regular part-time, extra-help and temporary persons who are subjected to the control and direction of ADE in the performance of their duties.

### **2.2 Exempt and Non-Exempt**

OPM of the TSS designates state job titles as exempt or non-exempt under the Federal Fair Labor Standard Act (FLSA). Certain positions may, because of the nature of their responsibilities, be exceptions to OPM's general designations. The FLSA requires the payment of overtime for non- exempt work in excess of forty hours in a work week, or the granting of compensatory time. The overtime earned is banked in lieu of cash overtime payment. For additional information concerning the classification of employment positions or eligibility for overtime compensation, contact the Human Resources Office.

### **2.3 Regular Full-Time**

Employees are employees who have completed the six-month probationary period and who are regularly scheduled to work forty (40) hours per week. Generally, they are eligible for ADE benefit package, subject to the terms, conditions and limitations of each benefit program.

### **2.4 Regular Part-Time**

All employees who have completed the six-month probationary period and who are designated to work less than full-time (40 hours per week). Regular part-time employees are eligible for some benefits sponsored by ADE, subject to the terms, conditions and limitations of each benefit program.

### **2.5 Temporary**

Workers obtained through temporary employment services for a brief and specific period of time (i.e. Staffmark, Kelly Services, etc.) as contract labor may be utilized for a period no longer than six (6) consecutive weeks or 240 hours per calendar quarter. In no event may temporary personnel be authorized to work more than forty (40) hours in a week. Temporary employees are not entitled to any State benefits. **References: ADE's Financial Policy and Procedures Manual.**



## **2.6 Extra Help**

Extra help employees may not work more than one thousand (1,500) hours per fiscal year unless otherwise specified in ADE's appropriation act. The only benefit extra help receives is paid time off for holidays when the work schedule qualifies them. OPM Policy Reference: 39 and ADE's Financial Policy and Procedures Manual.

## **2.7 Job Share**

One budgeted position may be occupied by two or more employees to allow job sharing, a form of employment in which the hours of work of two or more persons are arranged in such a way as to cover a single extra-help or regular full-time salary position in agencies/institutions higher education. The number of hours worked between the two or more part-time employees cannot exceed the number of hours a full-time employee would work in the same position.

All employees in a job share position must be part-time. The total number of hours worked for all employees for a given biweekly pay period may not exceed eighty (80) hours. Each employee in a job share position must use the position in the same way. For example, if the position is classified as a secretary, all employees must perform secretarial duties. Requests must be reviewed and approved by OPM.

## **2.8 Initial Probationary Period**

The duration of the probationary period for new employees and employees who are transferring from another State agency shall be six (6) months, however, the probationary period can be extended up to one year. The period shall be an essential part of the examination process and shall be utilized for the most effective adjustment of a new employee. During this period, both the employee and the supervisor have the right to terminate employment without advance notice. In addition, if a current employee is promoted to a new position within ADE, a six (6) month probationary period is imposed.

## SECTION III – HIRING POLICIES AND PROCEDURES

### 3.1 Position Classification: Reference

All ADE titles are authorized by the Arkansas General Assembly in ADE's appropriation acts and are governed by the Uniform Classification and Compensation Act (Class/Comp Act). The Class/Comp Act is administered by the Department of Transformation and Shared Services / Office of Personnel Management (OPM).

The following definitions will apply to the terms whenever and wherever used in ADE policy:

1. **Class or classification:** A group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training and experience or skill, and other characteristics that the same title, the same test of fitness, and the same scale of compensation have been or may be applied to each position in the group.
2. **Class specification:** A written document which identifies a group of positions that have the same type of work and responsibility and states the general components by providing a class title, class code, distinguishing features and examples of work, knowledge, skills, and abilities, and the necessary minimum education and experience requirements to perform the assigned duties.
3. **Crossgrade:** A temporary reclassification of a position during the fiscal year. OPM may authorize a temporary change in the classification of a position from the classification authorized in an agency appropriation act between legislative sessions to assure correct classification.
4. **Demotion:** The change in duty assignment of an employee from a position in one classification to a position in another classification of a lower pay grade within the same pay table.
5. **Employee:** A person employed in a legislatively authorized position either on a full or part-time basis by a state agency. A class title and pay grade must be established in an agency's appropriation act.
6. **Entry pay level:** The minimum entrance salary rate for a grade established on a pay tables.
7. **Extra help employee:** A person employed in an extra help position. Extra help employees of state agencies may not exceed 1,500 hours worked in a fiscal year unless otherwise specified in an agency's appropriation act.
8. **Grade:** An authorized pay range established in the Class/Comp Act.
9. **Job description:** A written document which identifies the duties and responsibilities of a specific position. A job description is not a class specification, but rather describes the tasks involved in a single position.
10. **Job sharing:** A form of employment, approved by ADE and OPM, in which the hours of work of two (2) or more persons are arranged in which the work hours of two (2) people are arranged to cover a single, regular, full-time position.
11. **Maximum pay level:** The highest authorized salary rate for a grade established on a pay table.
12. **Midpoint pay level:** The rate of pay midway between the entry pay level and the maximum pay level established for each pay table.
13. **Office of Personnel Management (OPM):** The Office of Personnel Management of the Transformation and Shared Services (TSS) acting under the authority granted in this policy and subject to the direction of the Director of Transformation and Shared Services (TSS).

14. **Position:** Employment that is legislatively authorized in a state agency, occupied or vacant requiring the services of one (1) full-time equivalent employee.
15. **Promotion:** The change in duty assignment of an employee from a position in one classification to a position in another classification of a higher salary grade within the same pay table.
16. **Reclassification of a position:** A change in the assignment of a position from one classification title to another, or when an employee is assigned to a title that more accurately reflects his/her job functions and responsibilities.
17. **Reduction in force (RIF):** A procedure that eliminates positions due to agency's organizational structure change, budgetary reductions, loss of functional responsibility by the agency, loss of federal funding, grants, or other special funds.
18. **Special entry rates:** Rates of pay approved above the entry level of a pay grade.
19. **State Personnel Administrator:** The State Personnel Administrator of the Office of Personnel Management.
20. **Transfer:** A change in the duty assignment of an employee from one position to another position in the same classification or between pay tables.

#### **Duties of Legislative Council**

1. Review the establishment and implementation of new classification titles proposed between legislative sessions due to program changes;
2. Review the staffing levels of all agencies and submit to the General Assembly for revisions, modifications, or additions;
3. Conduct salary surveys of the private and public sector for comparable jobs to establish equitable and competitive rates for employees; and
4. Review the job evaluation system used to set salary grade levels and recommend changes to OPM.

#### **Duties of OPM**

OPM is responsible for administering and maintaining the statewide classification and compensation plan including:

1. Developing written class specifications based on the duties and responsibilities assigned to the positions and the requirements necessary to satisfactorily perform the duties;
2. Assuring all positions assigned to agencies adhere to the laws governing the statewide classification and compensation system;
3. Offering assistance to all other state agencies, departments, boards, commission or institutions that are not covered by the statewide classification and compensation system which may want to voluntarily establish its positions into classifications in a like manner as the statewide system;
4. When determined necessary, authorizing the reclassification of positions having substantial changes in the duties and responsibilities assigned to the position;
5. Reviewing and monitoring the effectiveness of the statewide classification and compensation plan and submitting recommendations for revisions, modifications, or additions to the Governor and the Joint Budget Committee of the Legislative Council in advance of the general and fiscal sessions;
6. Developing and implementing uniform personnel policies and procedures;

7. Establishing a procedure for reviewing an applicant's qualifications that do not meet or exceed the position's required minimum qualifications, but that may substitute for the required qualifications;
8. Monitoring agency's personnel transactions;
9. Establishing new classifications at an appropriate grade level to meet new or changed conditions;
10. Reviewing the class specification in order to ensure the accuracy or the description of the assigned duties and minimum requirements necessary to perform these duties to maintain a valid relationship between the requirements and the duties and responsibilities of the job;
11. Administering and maintaining the performance evaluation system;
12. Providing assistance to agencies in identifying, developing, and maintaining training and resource programs;
13. Developing and implementing rules to ensure a uniform personnel administration system;
14. Reviewing and approving both the classification and number of positions for each agency on a biennial basis and providing a recommendation to Legislative Council; and
15. Reviewing and recommending changes to agency's personnel policies, including disciplinary policies.

Position classification is creating and classifying positions with a title, classification code (job code), and grade level. During each legislative session, the General Assembly will approve the classification titles with assigned grades. Each state agency has a specified number of positions that are authorized in its appropriation act. Salaries for positions covered in an agency's appropriation act must be made in accordance with the Class/Comp Act. For more information about established titles and grades, see the Position Classification (Titles and Grades) policy.

Each position title in the classification system will be described by a class specification which includes a summary of the overall job functions, typical job functions, knowledge, skills and abilities, and minimum qualifications. The class specification will also contain information on licensures or certifications required to hold the position. All state agencies are held to the Class/Comp Act unless other provisions in special language found in their appropriation act specifically allows for salary increases, grade assignments, class title assignments, salary increase eligibility, and other provisions different from the Class/Comp Act.

### **3.2 Recruitment, Hiring Policies and Procedures**

ADE seeks to employ the best-qualified personnel in all areas of our operations. Initial employment, employee compensation, training/development and subsequent promotion opportunities are extended to all persons regardless of race, color, national and ethnic origin, sex, age, or disability in accordance with [TSS/OPM policy 17](#), concerning equal employment practices..

Employees are hired to perform specific duties that are associated with a specific job classification. All job classifications, qualifications and the pay range associated with a position are established by TSS and OPM. Employees work five 8-hour days each week. Full-time employees normally work forty (40) hours per week; each biweekly pay period consists of ten (10) workdays and/or eighty (80) hours.

ADE engages in an open recruitment process for filling new positions and locating replacement personnel. Our recruitment and hiring practices will advance our strategic goal of building a workforce of persons committed to the vision and mission of the Department. ADE will advertise and fill positions in accordance with [OPM policy No. 8](#)

To facilitate the efficient recruitment of candidates, the following guidelines should be followed:

1. A "[Hiring Freeze Request Form](#)" and a Job Requisition will be completed and the necessary authorizations will be secured prior to the search.
2. A posting of the position will be on the following websites:
  - ADE website: [Division of Elementary and Secondary Education - Employment \(arkansas.gov\)](#)
  - SuccessFactors website: [Jobs at the State of Arkansas](#)
  - Or any other website as determined by the Commissioner of Education
3. The hiring division will conduct interviews and special effort should be made to consider minority candidates and veterans.
4. Prior to hiring, reference checks will be conducted by the Human Resources Office on final candidates whom are being considered for a position with ADE.
5. The offer of employment will be made by the Human Resources Office and should be followed up by a written confirmation. The offer is not official until it is given in writing.
6. Candidates not selected will be contacted by the Human Resources Office.
7. Selection of a candidate will not occur until the vacancy announcement closes.

Hiring occurs when the Human Resources Office initiates a job offer and the candidate accepts. The Human Resources Office then creates the employee's personnel file.

Under no circumstances shall a resume replace the approved state of Arkansas Employment Application for employment. Resumes may be attached to the completed employment application for additional information.

### **Falsifying an Application**

An employee who is found to have falsified his or her employment application by alleging to have earned a college degree which was not earned will be immediately terminated from employment. Falsifying an employment application in any other material way may be grounds for immediate termination.

### **3.3 Minimum Qualifications**

Minimum qualifications are the education and experience, as listed on a job description (class specification), required to perform a job. ADE's Human Resources Office will review all applications for a vacant position to determine whether an applicant meets or exceeds the minimum qualifications in order to be considered for the position.

To assure a valid relationship exists between the minimum qualifications and the duties and responsibilities described in the class specification, TSS / OPM may revise, when necessary, a class specification, including the minimum requirements and any other requirements.

### **Substitution of MQs**

ADE may substitute job related education and experience for the specific requirements of the class specification if the applicant has other job-related qualifications that may be substituted.

Positions requiring certification or licensure requirements cannot substitute other job related education and/or experience for all or part of the basic requirements.

**Disqualifications -** Applicants will be rejected if the applicant is unqualified for the performance of duties of the position to which he or she seeks employment, has made any misstatement of any

material fact, or has practiced any deception or fraud in the application or the application process.

The Human Resources Office will review and confirm acceptable references prior to offering the position and will contact and provide the selected candidate with necessary details. Grade placements and salaries are quoted only by the Human Resources Office. The Human Resources Office will keep the appropriate supervisors informed during the process.

### **3.4 Selection of Successful Candidate**

The Assistant Commissioner's, or his/her designee's, primary objective shall be the selection of the best-qualified applicant for each position, based on job-related factors, including relevant work experience, performance history, applicable education and training, and the depth of required knowledge skills and abilities (KSAs) as described in the Minimum Qualifications and ADE Special Requirements.

Employees are selected on the basis of work history, professional and other skills, knowledge, judgment, education, experience, character, motivation and other work related recognized competence and experience.

The successful candidate will be contacted by the Human Resources Office. The initial notification of selection may be oral, but the official offer will be in writing and will include the specific terms of employment. Immediately following approval of the recommendation, the Human Resources Office shall take actions necessary to staff the selected candidate.

This search will verify through the current and former employer's Human Resources Offices dates of employment, position, duties, eligibility for rehire, salary, attendance and performance. The former and current employer's policy will determine types of information released.

If a portion of the hiring decision is based on possession of a degree, license or certification and a requirement for the position (i.e., accountant) the Human Resources Office will obtain a copy of the degree, license, or certification from the applicant.

If a candidate for employment is an internal candidate or/a previous ADE employee, the official personnel file, including documented performance evaluations, documented disciplinary action and attendance records if requested shall be made available to the hiring supervisor and will form part of the hiring decision for the new position unless that personnel file was destroyed in accordance with the Arkansas General Records Retention Schedule. Satisfactory references and review of the personnel file, if applicable, are recommended before an offer of employment is made to any internal candidate.

### **3.5 Guidelines for Releasing Employment Information on Current and Former Employees**

Prospective employers may request reference checks on prospective employees with written consent from the prospective employee. Arkansas law establishes the guidelines for what an employer may release on a former employee.

#### **Providing References to Prospective Employers**

The employee's signed and dated consent must be given before any information can be released on the employee's employment history. The consent must be on a separate form from the employment application form, or, if included in the employment application form, must be in bold letters and in larger typeface than the largest typeface in the text of the employment application form. The consent form must state, at a minimum, language similar to the following:

"I, (applicant), hereby give consent to any and all prior employers of mine to provide information with regard to my employment with prior employers to (prospective employer)."

If an applicant is hired and remains with the new employer for longer than six months, the consent shall be valid for no longer than six months. If the applicant is hired and remains with the new employer for less than six months, the consent shall be valid for six months after the termination of employment.

The following information may be disclosed about a current or former employee's employment history to a prospective employer upon receipt of the written consent from the current or former employee.

1. Date and duration of employment;
2. Current pay rate and wage history;
3. Job description and duties;
4. The last written performance evaluation prepared prior to the date of request;
5. Attendance information;
6. Results of drug or alcohol tests administered within one (1) year prior to the request;
7. Threats of violence, harassing acts, or threatening behavior related to the workplace or directed at another employee;
8. Whether the employee was voluntarily or involuntarily separated from employment and the reasons for the separation; and
9. Whether the employee is eligible for rehire.

A current or former employer may disclose information to a prospective employer in a format that is convenient to the current or former employer, including electronically.

### **3.6 Orientation of New Employees**

All employees are scheduled in the first week of employment; an orientation meeting with representatives of the Commissioner's Office, Information Systems, Communications (Pictures), Finance and Human Resources Offices to discuss benefits, policies and procedures. All staff must complete payroll information forms and other essential paperwork in the Human Resources and Finance Offices. The necessary documents will include:

- Acknowledgement forms regarding ADE policies
- State tax withholding form
- Federal tax withholding form
- I-9 form (Employment Eligibility Verification) for both part-time and full-time employees
- Eligibility to operate state vehicle form
- Direct deposit form
- Arkansas Teacher Retirement System forms

#### **All full-time employees must also complete:**

- Health insurance application (with option form)
- Life insurance enrollment form
- Dental insurance enrollment form, if desired
- Vision insurance enrollment form, if desired

Other necessary forms may be required by changes in federal laws, state laws or policies.

There is a continuing onboarding process to aid in the acclimation of a new employee to working in the Arkansas Department of Education.

## **Pay Procedures**

Pay is issued by the State of Arkansas twenty-six (26) times each year on a bi-weekly basis.

As a condition of employment, a person hired or appointed to ADE is required to accept payment of salary or wages by electronic warrants transfer (direct deposit) to the employee's financial bank account. New hires must complete the Mandatory Direct Deposit Notification Form at the time of the job interview. Deposit authorizations are done at the time of the orientation. Changes to the authorizations can be done anytime by contacting the Payroll Benefits Specialist in the Finance Office or the Human Resources Office.

If an employee can demonstrate a hardship resulting in the inability to continue the use of direct deposit, they must submit a Direct Deposit Hardship Exemption Request Form to OPM. The Chief Fiscal Officer of the State has the authority to grant exemptions due to a hardship or upon any other reasonable basis.

This policy does not apply to:

1. Any employee who was in the employment of the state prior to August 12, 2005 and subsequently receives a promotion appointment, transfer, or other change in position within the same personnel system
2. Elected Constitutional Officers and their employees
3. The General Assembly and their employees
4. Members and employees of the Arkansas State Supreme Court
5. The Administrative Office of the Courts and Circuit Courts
6. Prosecuting Attorneys not including Deputy Prosecuting Attorneys
7. The Arkansas Game and Fish Commission
8. The Arkansas State Highway and Transportation Department
9. Administrative, academic, classified, and non-classified employees of the state-supported institutions of higher learning

Any employee exempted from this policy may elect to enter a direct deposit on a voluntary basis.

## **3.7 Identification Badges/Cards**

ADE employees are issued an Employer Identification Badge (ID) with photo when hired. To ensure a safe and secure workplace and promote a positive public image, an ID badge serves the dual purpose of readily identifying ADE employees and the Division in which they work as well as other authorized personnel, while providing measured protection against unauthorized personnel and intruders. This ID badge provides access to ADE buildings through keyless entry.

Employees are required to have an ID badge available for presentation at all time. Any employee refusing to show his/her ID badge when requested may be subject to disciplinary action up to and including discharge from employment.

When an employee terminates, the ID badge as well as other ADE property must be returned to the Human Resources Office. In the event an employee terminates without notice the Human Resources Office shall contact the Central Services immediately to have all access codes associated with the ID badge cancelled.



Any employee losing his/her ID badge should notify the Human Resources Office, immediately. The replacement of an ID badge will be free of charge for the first replacement. Any additional replacements will incur a \$15.00 charge.

### **3.8 Employment Positions with Licensure Requirements**

An individual in a position that requires a license is responsible for maintaining a valid, active license. Failure to obtain or maintain a current license, certificate or other qualification required by law or rule as a condition of continued employment may warrant disciplinary action.

When you renew your Arkansas Educator's License, be sure to look it over carefully. If it is not exactly as you believe it should be, immediately contact the Office of Educator Licensure. If it is correct, supply an original copy of the license to the Human Resources Office. For information on educator license applications or renewals, please contact the: Arkansas Department of Education, Office of Educator Licensure, Four Capitol Mall, Room 106B, Little Rock, AR 72201, Phone (501) 682-4342 Fax (501) 682-4898

Email: [ade.educatorlicensure@arkansas.gov](mailto:ade.educatorlicensure@arkansas.gov)

For positions with other license requirements please contact the respective office to maintain a valid license.

### **3.9 Guidelines for Personnel File Contents**

**Under no circumstances can personnel files be removed from the Human Resources Office.** The official employee personnel file is the property of ADE and any access to the information they contain is restricted and confidential as allowed by law.

Employees may review their personnel records and have them copied, but may not remove documents from the file. Such an inspection must be requested in writing to the Human Resources Office and will be scheduled at a mutually convenient time. All inspections must be conducted in the presence of a designated member of the Human Resources Office. Requests to review personnel files under the Arkansas Freedom of Information Act shall be handled in accordance with the provisions of that Act.

The Human Resources Office shall maintain a personnel file for each employee containing pertinent information regarding their employment relationship with ADE. The information contained within the file shall be consistent with state and federal laws and regulations, and ADE policies, as applicable. Access is limited to supervisors or others with administrative responsibility, persons responsible for maintenance of the files, or others granted access by ADE policy or contractual requirements.

Personnel files contain forms related to the staff member's employment; i.e., resumes and/or application materials and letters of offer, change of status forms, performance appraisals, letters of recognition and/or commendation and any disciplinary record. Grievance materials, including documents related to discrimination or sexual harassment complaints, will be maintained in a separate file. Letters of recommendation supporting the employee's original hire will be held in a separate file rather than the employee's personnel file.

A separate medical file is maintained for information related to Worker's Compensation, the Family and Medical Leave Act, designation of the employee as protected under the ADA and documentation relating to accommodations, as well as Leave of Absence forms regarding the same. All forms and correspondence related to personnel actions covered by these acts or correspondence containing personal medical information are held in separate files. The ADA provides that the separate ADA related medical file must be kept separate, apart from the location of personnel files and that access is limited to those supervisory personnel involved in the implementation of workplace accommodations.

Employees are free to forward copies of certificates, special awards, letters of commendation, or other similar items to the Human Resources Office for inclusion in their personnel file. The personnel files for employees who have terminated are maintained in the Human Resources Office.

### **3.10 Supervisor's Working File**

**The supervisor's working file is a confidential file and is only to be disclosed to those with a "business need to know or as required by law."** No clerical or administrative staff are authorized to maintain these files.

A supervisor's file on an employee is documentation of incidents, behavior, communications, counseling, compliments, attendance patterns, or any other note the supervisor wishes to store to help refresh his/her memory at some later date. Only the current supervisor can place documentation or notes in this file, remove them or even review them. The file is not to be open for review by other supervisors, managers, employees, or even the employee. Since it can contain anything the supervisor wants, the file or its contents cannot be considered in the hiring process, or used as evidence to support an evaluation or disciplinary action. A supervisor's working file is not considered part of the official personnel file. Any personnel action can only be based on what is in the official personnel file. If any information in the supervisor's file is to be used as the basis for a timely personnel action, it must be placed in the employee's official personnel file. Any information upon which the supervisor intends to take formal action should be moved into the personnel file in the form of a Performance Improvement Plan (PIP), letter of warning, Notice of Intent (NOI) or other disciplinary documentation and a copy given to the employee.

After a supervisor no longer has a relationship with ADE, the documents in the supervisory file (retirement, transfer, adverse action, resignation, etc.), shall be sent to the Human Resources Office, immediately for appropriate destruction. If the employee should be reinstated to a position under the same supervisor, the supervisor shall establish a new file, which will not include any prior information.

### **3.11 Required Data for Personnel Files**

The following information is required for **all** personnel files that are housed in the Human Resources Office. These files serve as the historical record of information pertaining to a staff employee from the date of hire to separation:

1. Employment application and resume
2. Tax forms
3. Personal data (job description, communications, compensation history and documents related to the current position and employment status).
4. Teacher retirement membership forms
5. Direct deposit authorization forms
6. Copy of birth certificate
7. Copy of social security card
8. Signed Code of Ethics/Fraud form
9. Signed form - ADE Handbook with accompanying policies
10. Performance Evaluations
11. Documentation on disciplinary issues
12. Salary disclosure forms for required personnel
13. Personnel action documents (accommodations, commendations, written letters of warning, letters of retirements/terminations)

Formal employee complaints, sick leave documentation and medical information items are kept in a separate confidential file, but are still considered part of the official personnel file:

### **3.12 Personal Data Changes**

When employees are hired, they provide ADE's Human Resources Office with information needed to place them on the payroll. Keeping personnel files up to date is important.

Employees have a responsibility to promptly notify ADE's Human Resources Office of any changes in name, address, telephone number, number of dependents, education or training, professional registration or certification, direct deposit, etc. For beneficiary changes, contact the Payroll Benefits Specialist in the Finance Office. The employee may also contact ATRS, 501.682.1517 or Employees Benefits Division, whichever is appropriate.

### **3.13 Probationary Employees Probationary Period**

An initial probationary period is the period of time during which a new employee becomes familiar with his/her new job. The new employee will determine whether or not he or she can perform the duties of the job and if he or she wants to keep the job. Likewise, ADE uses the time to determine whether or not the employee can perform assigned tasks satisfactorily and whether or not the employee can and is complying with work rules and policies.

The duration of the probationary status shall be six (6) months from their date of hire. The period shall be an essential part of the examination process and shall be utilized for the most effective adjustment of a new employee. At the end of the probationary period, ADE must place the employee in a regular full- time position or terminate the employee if his/her performance is determined to be unsatisfactory. At the discretion of the Assistant Commissioner/designee, the probationary period may be extended for a period not to exceed an additional six (6) months, in the event that further evaluation is necessary.

Extensions must be in writing and issued prior to the end of the initial probationary period, and must identify the reasons for the extension and what the employee must do to successfully complete the probationary period. A copy of the extension must be signed by the employee and submitted to the Human Resources Office. If the employee is off work for an extended period of time the dates of the extended probation will be adjusted accordingly. Successful completion of the probationary period does not create a contractual commitment to continued employment. When an employee completes the probationary period, his/her status is still one of employment-at-will.

Employees who are rehired following a break in service shall serve a new probationary period whether or not they previously completed a probationary period.

#### **Other Probationary Periods**

ADE employees who are promoted, demoted for cause, voluntarily solicit a demotion or request and are granted such transfer into another position, will serve a six (6) month probationary period. These probationary periods may be extended up to an additional three (3) months.

#### **Disciplinary Probationary Periods**

Any employee may be placed into a probationary status because of unsatisfactory work performance and/or because of work rule violations. Disciplinary probationary periods may be up to six (6) months in duration and may not be extended beyond six (6) months.

ADE recognizes that dismissal for any reason is a serious matter. Any time during an employment probationary status period (initial new hire, transfer probationary status, discipline probationary status) probationary employees may be terminated from ADE without right of appeal or hearing. Recommendations regarding dismissal are made at the Assistant Commissioner level to the Assistant Commissioner of Fiscal and Administrative Services after consultation with the immediate supervisor and discussion with the effected employee. The reason given for the termination shall be submitted in writing to the Human Resources Office.

## **Promotion/Demotion/Transfer**

Upon promotion, a change to a higher grade with significantly higher job duties, an employee's salary shall be calculated as follows:

- For a promotion to a position of a higher grade on the same pay plan, the employee's maximum rate of pay shall be increased by 10%.
- For a promotion from a position on the career service pay plan to a position on the professional and executive pay plan, the employee's rate of pay shall be increased by 12%.

## **Demotion**

An employee who is demoted for cause or voluntarily solicits a demotion of one or more grades on the career service pay plan or on the professional and executive pay plan, the employee's pay rate shall be lowered by 10%.

Upon demotion from a position on the professional and executive pay plan to a position on the career services pay plan, an employee's pay rate shall be reduced by 12%.

## **Lateral Transfer**

A lateral transfer is a move from one classified position to another with the same grade, salary and title with no change in eligibility date.

## **3.14 Employment Separation/Termination**

An employee of ADE is free to terminate employment at any time and for any legal reasons, which may include but are not limited to: employee's resignation, retirement or death; reduction in the workforce; existence of applicable identified significant performance concerns (e.g., poor job performance or other issues related to the employee failing to meet performance standards in his/her job) or unacceptable behaviors (e.g., misconduct, negligence, insubordination, poor attendance and other issues related to an employee's general conduct and behavior).

## **Types of Separation**

This section identifies the types of separation from state service and their related procedures and to advise terminating employees of benefits to which they may be entitled.

## **Notice of Resignation**

Resignation is a voluntary separation ("at will") initiated by the employee to end employment with ADE, unless a written agreement approved by the Commissioner of Education is in force. Although advance notice is not required, ADE requests a minimum of two weeks written (preferably thirty {30} days) notice prior to resignation.

ADE's Resignation/Retirement form is on [Human Resources](#) Off-Boarding at [Human Resources System - Resignation/Retirement Notice \(arkansas.gov\)](#)

Further, it is the manager's/supervisor's responsibility to ensure that the Time and Leave Unit receives the terminating employee's timesheet, via the EASE system, in sufficient time to process the final paycheck in accordance with state and federal laws and regulations.

If circumstances exist where, for business reasons, the manager/supervisor desires to extend the last date worked, it is reasonable that the manager/supervisor and employee may discuss working out a mutually agreeable alternate date, if possible. Once the last day of work is agreed upon, the separation shall be effective as of that date. The resignation date must not fall on the day after a holiday.

## Resignation in Lieu of Involuntary Termination

Employees being terminated may have the option of resigning in lieu of being involuntarily terminated, at the discretion of the division Assistant Commissioner.

If the resignation is accepted, it should be submitted and accepted in writing. However, an employee who resigns in lieu of termination will not be considered eligible for future rehire without a waiver by the Deputy Commissioner of Education.

(**NOTE:** Waivers granted by the Deputy Commissioner of Education to employees who resign in lieu of termination will be maintained in the employee's personnel file and AASIS will be upgraded to "eligible for rehire.")

## Retirement

A voluntary separation after meeting Arkansas Teacher Retirement Systems (ATRS) Eligibility Rules. In planning for retirement, an employee should give as much advance notice as possible to his or her manager/supervisor.

Managers/supervisors should encourage retiring employees to consult with an ATRS Counselor to learn about benefit options and coverage based on eligibility rules established by ATRS and to visit the ATRS website at [www.atrs.gov](http://www.atrs.gov).

## Job Abandonment

Job abandonment is a voluntary resignation without notice and precludes the employee from future employment with ADE. Employees who are absent for three (3) consecutive workdays without being excused or do not notify the supervisor of the extent and cause of the absence and provide supporting documentation as required by this policy, will be considered to have abandoned his/her employment, absent extraordinary circumstances.

However, for employees in "extra help" positions, or in regular positions but within the initial six month "probationary" period: On the **first** workday that the employee fails to report to work or follow proper office procedures for reporting the absence, the employee will be considered to have abandoned his/her job and will be terminated, effective the end of the first day of absence.

For employees in regular full-time positions who have passed the initial "probationary" period of six months, job abandonment is defined as follows:

1. At the end of the **third** consecutive workday that the employee fails to report to work at his/her assigned workstation and follow proper office procedures for reporting the absence, the employee will be considered to have abandoned his/her job and the absence will be considered a voluntary resignation of employment with ADE.
2. However, for employees in regular positions within the initial six (6) month "probationary" period, job abandonment is defined as follows:

On the **first** workday that the employee fails to report to work at his/her assigned workstation and follow proper office procedures for reporting the absence, the employee will be considered to have abandoned his/her job and will be terminated effective the end of the first day of absence.

ADE's Human Resources Office shall prepare and send a written notice via overnight mail to the employee. The notice shall advise the employee that he or she has abandoned his/her position and therefore, has voluntarily resigned from employment. The notice also shall indicate the effective date of the resignation. The effective date shall be the last day the employee was at work or on approved leave, whichever last occurred. The notification shall provide at least three (3) work days for the employee to respond with any extraordinary circumstances that the employee believes would warrant a reversal of the determination.

The Assistant Commissioner of Fiscal and Administrative Services shall consider this information, in consultation with the supervisor and has the discretion to rescind the job abandonment/voluntary

resignation. The employee may not appeal this decision.

### **Involuntary Termination**

An involuntary termination of employment. Termination may be for any reason or no reason at all. However, termination shall not be for an unlawful reason.

### **Layoff/Reduction in Force (RIF)**

Termination based upon an action initiated by a division head as a result of the elimination or reductions in positions, funding and grants, reduced or changed work requirements, or departmental reorganization.

ADE management may lay off an employee without prejudice due to significant organizational structure changes, shortage of funds or work, abolishment of positions or duties, loss of functional responsibility and/or the loss/non-renewal of federal funding, grants or other special funds. The Reduction-In-Force Policy assures equitable and consistent treatment of employees throughout ADE should a reduction-in- force occur.

### **Deceased Employees**

A termination due to the death of an employee will be made effective as of the date of death. All compensation due shall be paid to the estate of the employee. Upon receiving notification of the death of an employee, the manager/supervisor must notify the Human Resources Office immediately and advise survivors of the deceased to contact ADE's Finance Office. ADE Finance's Office will process all applicable beneficiary documentation based on appropriate State benefit programs.

### **Failure of Probation or Introductory Period**

Employees that are newly hired, transferred, or promoted into a regular position and fail to meet the expectations of the job requirements will be terminated. Managers/supervisors must consult with the Human Resources Office before any action is taken.

### **Return of Property Upon Separation**

The separating employee must return all ADE property at the time of separation, including but not limited to telephone cards, office building keys, identification badges/cards, credit cards, uniforms, tools, library materials, ADE-issued cell phones, office building security passes, parking decal, electronic equipment, computerized diskettes, electronic voice mail codes and intellectual property, computer passwords prior to his/her last day of work. It is the responsibility of the manager/supervisor to ensure that all ADE property is returned to the appropriate unit.

## **3.15 Retired State Employees Returning to State Employment**

This policy provides guidance concerning hiring a retiree.

The State of Arkansas wants to provide an opportunity for, and encourage, the citizens of Arkansas who have not previously retired from state government to seek state employment. ADE is encouraged to expand their recruitment efforts to the taxpayers who have not previously worked for and retired from state government.

ADE cannot extend an offer of employment to a candidate who previously retired from the State of Arkansas ("retiree") unless ADE has received approval from the Office of Personnel Management (OPM).

Approval by the Secretary of Education must be provided to OPM along with the written justification for requesting to hire a retiree including, but not limited to, the following:

1. The list of qualified candidates with their qualifications;
2. The specialized knowledge or skills required for the position; and
3. The reason no other candidate can be trained to perform the job functions.

This policy does not apply to retirees seeking state employment in an extra help position or to candidates who retired from city employment.

### 3.16 Employee Disclosure Reference

Arkansas law requires applicants or employees to disclose specific relatives who are employed by the state and to disclose their benefit or any relative's benefit from a state contract or grant.

#### Definitions

**Employee:** A person whose employment is not seasonal or temporary and whose actual performance of duty requires 1,500 or more hours during a fiscal year.

**Relative:** Husband, wife, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, stepsister, half-brother, half-sister, brother-in-law, sister-in-law, daughter, son, stepdaughter, stepson, daughter-in-law, son-in-law, uncle, aunt, first cousin, nephew, or niece.

#### Specific Provisions

Originally, Executive Order 98-04 created applicant and/or employee disclosure requirements regarding family members who are or have been employed by the state and/or receive benefits from a state contract or grant. Existing and subsequent legislation supported the disclosure requirements.

ADE is required to obtain completed and signed disclosure forms from the top applicant(s), whether the applicant is a current or former (within the last 24 months) state employee or has never been employed by the state prior to a formal offer of employment. The disclosure requirements are as follows:

- **F3-F4** - Employee Disclosure/Certification and Employment of Family Members Form.
  - This is a two page document in which an applicant and/or employee discloses his/her familial relationship, position and office as defined.
- **F5-F6, F7** - Employee Disclosure Requirements/Restrictions Notice.
  - This portion of the form series is a three page document which includes information to an applicant and/or employee regarding financial interest gained through a familial tie to a state contract or grant, the penalties for nondisclosure, receipt and understanding of the legislation and disclosure of his or her familial relationship, type of business, state contracting entity, amount and nature of the benefit received/to be received.
- **F8** - Employee Disclosure of Family Members Form (State Application Portion).
  - This is a checklist format found on state application forms for family member disclosure.

To report the information obtained from the F3/F4 and F8, use the employee reporting site:

[https://www.ark.org/dfa/dfa\\_disclosure/index.php?type=employee](https://www.ark.org/dfa/dfa_disclosure/index.php?type=employee)

To report the information obtained from the F7, use the grants and contracts reporting site:

[https://www.ark.org/dfa/dfa\\_disclosure/index.php?type=contract](https://www.ark.org/dfa/dfa_disclosure/index.php?type=contract)

### 3.17 Empowering Arkansas State Employees (EASE)

You can review/print your pay stub (remuneration statement) performance evaluation, benefit enrollment and leave time by accessing the EASE Internet Gateway at <https://ease.arkansas.gov/>. Pay stubs are created as PDF documents, so in order to download or open one, you must have software installed on your computer that allows the reading of PDF documents. [Adobe Reader](#) is freely available, but if you experience any technical issues during the download or install, please contact your local technical support office for assistance.

All activities [on EASE](#) require an AASIS User ID and password. In order to obtain an initial password,

an AASIS User ID and personnel number will be needed. Please contact the Human Resources Office for obtaining this information.

### **3.18 Vehicle Safety Program**

The purpose of this program is to check a candidate's Arkansas driver's record to verify a current, valid, driver's license and safe driving record and to reduce State insurance costs and loss of employee work time due to accidents.

1. If the employee is authorized to operate an ADE or private vehicle to conduct ADE business, the employee must maintain a valid driver's license in accordance with the requirements of applicable Arkansas state laws.
2. The employee must complete and sign the Authorization to Operate State Vehicles and Private Vehicles on State Business, VSP-1, to periodically obtain "Traffic Violations Reports". The employee must also provide a photocopy of their drivers' license.
3. If the employee operates or rides as a passenger in a State vehicle the employee is required to wear the seatbelt. Also, when driving a personal vehicle on State business and receiving mileage reimbursement the employee must wear their seatbelt. Passengers riding with State Employees on business for the State shall also use the seat belt when the vehicle is in motion.
4. Texting and driving in a state vehicle or while driving a personal vehicle for business purposes is strictly prohibited.
5. The employee must maintain the required liability insurance on the personal vehicle the employee uses to conduct ADE business.
6. The employee must report, in writing, all accidents or traffic violations occurring in a State vehicle within 24 hours or by the next business day and if driving a personal vehicle on State business within seven (7) days of occurrence. (See the Vehicle Safety and Drug-Free Workplace policies.)
7. If the employee has had an at-fault accident, the employee must attend a Defensive Driving Class within sixty (60) days following the accident.

ADE will use the traffic violation point system to identify high risk-drivers. Depending on the number and severity of the employee's traffic violations or accidents, the employee may lose the right to operate a State vehicle.

The employee's employment may be terminated if driving is an essential function of the employee's job and the employee's driving record reflects poor performance.

## **SECTION IV – Performance Goals and Compensation System**

### **4.1 Performance Evaluation**

#### **PURPOSE**

The Office of Personnel Management (OPM) developed a performance evaluation and increase pay system for employees of all state agencies, boards, and commissions covered by the Uniform Classification and Compensation Act. The pay for performance system, called Performance, Goals and Compensations System (PGCS) is an electronic system accessed through the Empowering Arkansas State Employees (EASE) application.

The Performance Management Program is a systematic process used to define the standards of



performance. The purpose of the PGCS is to facilitate the creation and nurturing of a performance-based culture where the individual employee's performance is aligned with the Arkansas Department of Education's (ADE) and the administration's objectives, and employees are appropriately rewarded for the results they achieve. All eligible employees in ADE will receive a review of their performance annually.

## POLICY

During an initial discussion, the employee's supervisor will explain and clarify the performance management process, establish performance standards, behaviors, and work outcomes, for which their performance will be reviewed. This discussion will provide constructive feedback/coaching to enhance performance and, if appropriate, discuss the consequences of unacceptable or marginal performance.

OPM has determined statewide performance standards called Groups (formerly Duty Areas) and Measurements (formerly Standards). ADE will select from the Groups and Measurements to establish the criteria each employee will be evaluated on during the rating period. PGCS establishes five rating categories listed below.

## DEFINITIONS OF RATING CATEGORIES

<b>Role Model</b>	Employee performance is exceptional and serves as a model for other employees. The employee had a major positive impact on ADE.
<b>Highly Effective</b>	Employee performance consistently surpasses established standards. The employee accomplished tasks and duties above requirements and made a positive impact on ADE.
<b>Solid Performer</b>	Employee performance meets all requirements for the position competently and proficiently. This represents the expected level of performance as established by an ADE director or supervisor.
<b>Needs Development</b>	Employee performance periodically falls short of requirements, or the employee requires development in the position.
<b>Unacceptable</b>	Employee performance is inadequate, and the employee has demonstrated an inability or unwillingness to improve or meet requirements.

## GROUP AND/OR MEASURES (Metrics) AND RATINGS

ADE is expected to review the Performance Evaluations Standards and Instructions catalog and select Groups and Measurements for every employee for the fiscal year performance period. **Not every Group and/or Measurement is required to be selected; only those Groups and Measurements that are relevant to the employee's job functions and responsibilities.**

The Secretary of Education has the option to establish ADE-wide Groups and Measurements by which all employees of ADE will be rated. The evaluating supervisor has the option to add additional Groups and Measurements for the manager's direct reports.

An annual review will include a rating for each work outcome, competency, and overall performance.

Each rating should be justified by objective fact-based statements of the performance. Any questions regarding the PGCS may be directed to the supervisor or the Human Resources Office.

The written performance appraisal is designed to strengthen employee performance by providing feedback on performance, providing an opportunity to establish future goals, and providing management's expectations for employee performance.

The performance appraisal is not to replace the daily feedback that occurs in the workplace but to provide an assessment of job skills and performance, identify areas of unsatisfactory job performance and needed improvement, provide recognition for above standard work performance and provide communication between management and the employee, which assists in creating a positive work environment.

ADE employees are encouraged to talk with their supervisor or the Human Resources Officer with any ADE-specific questions about the performance evaluation process.

### **DOCUMENTATION**

One file is maintained by Human Resources for each employee; this is the official file. Supervisors may maintain their own files on employees. The PGCS evaluation is an electronic document and is not required to be kept in the supervisory or the Human Resources Office employee file. Only pertinent information that supports the performance assessment given by the rating supervisor should be retained in the PGCS evaluation file. The PGCS evaluation must be kept available for employee review for three years.

Ratings of Role Model, Needs Improvement, or Unacceptable require documentation. Supervisors should attach documentation to support the evaluation notes and measurement rating, both positive and negative. Documentation may include Functional Job Description, Special Assignments, Positive Praise (letter, email, etc.), Corrective Action, Development Plans, Quantifiable Statistics, Career Development, etc.

The employees view their performance evaluation in EASE after all processing through ADE and OPM has been completed.

### **NEW HIRES AND TRANSFERS**

All employees, regardless of their hire date, will be rated in April of every year. Employees hired into a position prior to April 1 of each year will receive an evaluation for the rating period and may be eligible to receive a performance increase.

Employees within their initial probationary period may be given an evaluation before the end of their probation to provide feedback on performance and areas of needed improvement.

Employees within a six (6) month probationary period (new employees, transfers, position changes) should only receive a performance evaluation rating no greater than Needs Improvement. A waiver is possible if approved by the Assistant Commissioner.

### **DISTRIBUTION**

OPM will provide a normalized distribution curve; however, overall performance evaluation results will be determined by the Secretary of Education.

### **PERFORMANCE INCREASES**

Performance increases will be added to the employee's base salary instead of a one-time lump sum payment unless the employee is compensated at the maximum pay level. Employees compensated at the maximum pay level will receive a lump sum payment. All increases are subject to the availability of funding as determined by the Governor and the Chief Fiscal Officer of the State.

Funding and performance results will determine the final percentage increase for each agency. This is typically determined at the end of the fiscal year (early June).

### **EVALUATION AND FEEDBACK**

An employee should be given a Functional Job Description within 30 days of the employee start date. The functional job descriptions must be kept up to date to match employees' current job duties. Effective performance management is an ongoing process that involves position descriptions, performance evaluations, corrective action, and rewards and recognition.

Position descriptions are an important tool for documenting essential functions of the job and skills necessary to perform the job. Position descriptions are used for both recruitment and performance management. Supervisor responsibilities:

- a. Develop position descriptions for each employee they supervise;
- b. Review and revise position descriptions following a substantive change in the essential functions or any other modifications including, but not limited to, changes in work schedules, knowledge, skills, abilities, qualifications, environmental conditions, or physical requirements; and
- c. Meet with each employee individually to review their position description and discuss performance expectations immediately upon being hired or promoted to a position, directly following a substantive change in the essential functions of the position, and annually during the performance evaluation process.
- d. Employees may be asked to complete a self-evaluation by his/her supervisor.
- e. An employee may be placed on a process improvement plan (PIP) if the final evaluation rating is Needs Improvement (2) or below. No more than one PIP may be executed within a single rating period. Guidelines for a PIP are included within the ADE disciplinary policy #9.800.

### **FAILURE TO COMPLETE A PERFORMANCE EVALUATION**

A manager who fails to complete an employee's performance evaluation by the designated time may be ineligible for a performance increase or subject to disciplinary action as determined by the Secretary of Education.

### **EMPLOYEES ON INACTIVE STATUS**

An employee on extended leave without pay, including military leave, will be evaluated and receive an overall score during the same period as other employees. The salary increase will be effective when the employee returns to active pay status and will not be applied retroactively.

### **DISCIPLINARY MEASURES**

An employee who received a written disciplinary action during the rating period is ineligible to receive an overall rating of Highly Effective or Role Model.

### **APPEALING PERFORMANCE REVIEW SCORES**

There is no statewide appeal process.

### **CONFIDENTIALITY**

Performance evaluations are confidential documents and are not to be shared with individuals who do not require access. Any employee found to have violated confidentiality will be subject to disciplinary action up to and including termination. Scores remain confidential and must not be shared with employees until notified by ADE Human Resources Office.

## **SECTION V - EMPLOYEE BENEFITS PROGRAM**

### **5.1 Employee Benefits**

For purposes of this Handbook, a “benefits eligible employee” is defined as a regular employee working at least 1,500 hours per calendar year. All benefits accruing to any full-time employee will be available to the employee on a pro rata basis. Benefits available under the Federal Family Medical Leave Act (FMLA) are governed by separate criteria.

ADE offers a benefit package for its eligible employees, including immediate accrual of annual and sick leave, eleven paid holidays and a contributory retirement plan. ADE pays the major portion of medical health insurance for full-time employees and offers several medical plans from which to choose. These plans range from an indemnity plan with a PPO option to HMO's.

Employees may choose to participate in a deferred compensation plan and various options for life insurance, accident insurance, cancer care and intensive care insurance. Employees are also able to participate in the Arkansas Cafeteria Plan which is a program designed to allow an employee to pay for group health and life insurance premiums, dependent day care and out-of-pocket medical care costs tax free.

## **5.2 Workers' Compensation Insurance**

Employees who encounter an injury or illness on-the-job and are entitled to workers' compensation benefits, upon proper application, may utilize their accrued sick leave as a supplement to such benefits.

The combination of workers' compensation benefits and sick leave pay shall not exceed the employee's normal pay period salary. Employees receiving workers' compensation benefits for a permanent disability are eligible for full pay from both sources.

The option will reduce the employee's accrued sick leave on a proportional basis. For example, an employee's normal salary is \$150.00. The employee receives \$75.00 workers' compensation benefits and elects to receive an additional \$75.00 per week in sick leave payments. Thus, the employee uses sick leave at a rate of one-half the weekly salary which is equivalent to 2-1/2 days of sick leave for each week of disability.

The sick leave used to supplement workers' compensation will be reinstated in reverse order from which absence due to sick leave is charged for that portion of time taken that was covered by workers' compensation. For example, absence due to sick leave is charged in the following order: earned sick leave, earned annual leave, leave without pay. Reinstated leave will then be annual leave, then sick leave. Leave without pay is not covered by workers' compensation and therefore is not re-established.

In the event an employee receives workers' compensation payments as a salary benefit in addition to sick leave payments and the combined payments exceed the employee's normal weekly pay, the employee shall pay the excess amount to the agency for deposit in the agency's fund from which the sick leave has been paid. Upon receipt of the excess amount of pay, the agency shall then restore to the employee's credit that amount of sick leave that was used in a proportion that the workers' compensation payment is to the employee's weekly pay.

Agencies must continue to remit the employer's contribution to the State Employees/Public School Employees Insurance Program when an employee is on leave without pay and receiving workers' compensation benefits as a result of a work-related injury or illness.

**February 1, 2014**, the Public Employee Claims Division (PECD) of the Arkansas Insurance Department, who administers our workers' compensation program, introduced a Telephonic Injury Reporting System for ADE employees to file on the job injury claims.

Any employee with work related injuries who needs medical treatment must call the **Company Nurse Injury Hotline** at **1(855) 339-1893**. It is accessible 24 hours/7 days a week. All claims should be reported within **48 hours** of the injury, this service will aid in getting timely and appropriate medical treatment. Employees should immediately notify their supervisor of an injury.

Employees and supervisors should follow these steps when reporting a work-related injury effective

**February 1, 2014:**

**If the injury is life-threatening, call 911 and obtain medical care for the injured employee as soon as possible. The supervisor should call the toll free number to report the claim as soon as medical treatment is secured for the employee.**

**If it is not a life-threatening emergency, the employee (and the supervisor, if he or she is available), should call the toll free number 1(855) 339-1893 to report the injury (This service is available 24 hours/7 days a week). When calling the toll free number please provide ADE's Code QR37 to the Company Nurse Representative.**

Call the **Company Nurse Injury Hotline** at **1(855) 339-1893** when medical treatment is needed. If the employee is unable to call the Company Nurse, the employee's supervisor should make the call for the employee.

- A nurse will gather information and make a care recommendation and advise the employee on the next step.
- An injury report will be sent to the designated treatment facility prior to the injured employee's visit.
- The Company Nurse will send the claim form to the ADE Human Resources Office. Additional information and signatures will be required by the employee and their supervisor. A Human Resources Representative will contact the supervisor to complete this process.
- All referrals and follow up appointments must be approved in advance by the PECD. PECD will determine whether an employee's claim is eligible for workers' compensation benefits. Please contact the ADE Human Resources Office for Workers' Compensation contact information.
- If the employee is **NOT** seeking any type of medical treatment, the employee **must** complete the **Employee Incident Report**. **Do not** call the Company Nurse, if you are **not** seeking medical treatment.

### **Temporary Prescription Form (TPF)**

If employees have to receive medical treatment and need prescriptions filled, the employee will need a temporary prescription form. The ADE Human Resources Office will complete this form, make a copy and give the original to the employee to take to the pharmacy.

### **Lost Time and Family and Medical Leave Act (FMLA)**

If an employee starts missing time from work due to their work-related injury, please notify the ADE Human Resources Office immediately.

Workers' Compensation and FMLA run concurrently (at the same time). An injured employee may need to complete Family and Medical Leave documents in cases of "lost time" situations.

Salary compensation (Lost Time Wages) is not provided until the 8th day of absence due to injury.

- Day 1 through 7, (calendar days) is a waiting period. During this time, only allowable medical expenses are paid. If the employee wants full or part wages, he or she must use earned leave, if available.
- Starting with day 8, Workers' Compensation can pay approximately 2/3 of the employee's salary. Employees may continue to use earned leave to supplement partial salary payments.
- Day 14, Salary payments are made back to the second day of injury when the disability extends for at least two weeks. Salary payments are continued until employee returns to work.

If an employee begins losing time due to a work-related injury; PECD should be notified by way of a Form "S". A form "S" should also be completed and forwarded to PECD when an employee returns to work after being off from a work-related injury.

**Under no circumstances will Workers' Compensation and the employee's regular salary exceed the employee's regular salary.**

### **5.3 Employee Assistance Program (EAP)**

EAP is available to all employees and their families. EAP provides immediate professional assistance with personal, work related or emotional issues. A trained professional will assist with making an appointment with a licensed therapist or provide names and telephone numbers for network therapists. The EAP website features free articles, audio features and financial calculators to help with budgeting and investing, legal forms and newsletters. More information may be obtained by contacting Employee Benefits Division (EBD) ARBenefits, 501 Woodlane St., Suite 500, Little Rock, AR 72201, or New Directions at (877) 300-9103 [Toll Free] or going online [www.ndbh.com](http://www.ndbh.com), or [www.arbenefits.org](http://www.arbenefits.org)

### **5.4 Benefits Payable upon Termination Resignation or Retirement**

Upon termination of employment with ADE, all accrued vested benefits that are legally due and payable will be paid. Some benefits may be continued at the employee's option and expense. The employee will be notified in writing of the benefits that may be continued and of the terms, conditions and limitations of such continuance.

### **5.5 Health Insurance and Other Benefits**

Full-time and some extra help employees are eligible to enroll in Arkansas state group insurance plans. ADE also offers additional insurance options for term life, dependent life, vision, dental, accident, cancer, heart/stroke, ICU, disability, and long-term care and offers flexible medical spending accounts. These policies are offered through independent local insurance representatives. Local representatives are also available for 403(b) and 457(b) plans. Most are available for enrollment year around with no open enrollment.

**Medical and Colonial Life Insurance:** As an employee, you are eligible to enroll in Arkansas state group insurance plans. Medical and Colonial Life insurance policies are managed by the Employee Benefits Division (EBD) of the State of Arkansas. The employee should respond to EBD on medical insurance coverage regardless of whether to accept or decline; the employee can do this by completing paper enrollment forms or on the internet at [www.arbenefits.org](http://www.arbenefits.org). Pricing and policy information is available on the EBD website. Medical and life insurance enrollment is due within 30 days of the hire or the next open enrollment period. Coverage begins on the first of the month following the date of application.

**Supplemental coverage options:** As an employee, you are eligible to enroll in Arkansas state supplemental insurance and supplemental annuity options. These are supplemental policies, not managed by EBD; the employee must enroll directly with the appropriate company agent. Some supplemental policies can be made part of the Cafeteria Plan; therefore, it is recommended that the employee enroll in their choice. Agent contact information for the supplemental plans is available through ADE's Insurance

Representative in the Finance Office, Room 204A or at 501-682-4478 or on EBD's website.

**Payment:** All policy premiums will be deducted from regular paychecks and remitted directly to the company by EBD.

Effective January 1, 2014 all new hire full time employees and rehired employees will automatically be enrolled in the Arkansas Diamond deferred compensation plan managed by ING with a 3% employee contribution. Employees may "opt-out" within 30 days or choose to contribute more or less than the 3%.

**Transferring benefits:** If transferring from another Arkansas agency/institution of higher education

under the State EBD umbrella, benefits will be transferred, automatically through AASIS. Other supplemental policies will be transferred as allowed; it is the employee's responsibility to verify all deductions have been successfully transferred.

**Assistance:** ADE's Payroll Benefits staff will assist the employee as law allows. The Payroll/Benefits Office is located in Room 204A. Contact the staff member by telephone at 501-682-4478. For specific medical or life insurance assistance please call EBD Customer Service at 501-682-9656 or toll free at 877-815-1017.

For supplemental policy assistance please contact [www.arbenefits.org](http://www.arbenefits.org)

## 5.6 Career Service Recognition Payments

Employees become eligible for the annual Career Service Recognition Payment upon completion of 10 or more years of service in a regular salary full-time position. Extra- help service may not be counted.

Years of Service	<u>Annual Payment</u>
10 through 14 Years of State Service	\$800
15 through 19 Years of State Service	\$1,000
20 through 24 Years of State Service	\$1,200
25 or More Years of State Service	\$1,500

Employees receive their Career Service Recognition payment on their 10<sup>th</sup> anniversary and then each year of active service thereafter. Employees who are paid at maximum for their pay grade are also eligible to receive these payments. Federal and State taxes are withheld from these payments.

## 5.7 Arkansas Teacher Retirement System (ATRS)

ADE employees participate in the Arkansas Teacher Retirement System. ATRS is a defined benefit plan under 401(a) of the IRS Code. ATRS is one of the state retirement systems and is governed by retirement law of the State of Arkansas. ATRS provides retirement, disability and survivor's benefits to employees of Arkansas public schools and other education related agencies. Upon beginning employment with ADE, 6.5% of the employee's salary is deducted each pay period on a pre- tax basis and matched with a contribution of 14% from the state to be deposited in the employee's retirement account.

## SECTION VI - PAID AND UNPAID LEAVE

The purpose of this section is to establish ADE procedures for eligibility, accrual and use of annual, sick, maternity, court and jury, holiday, without pay, Workers' Compensation, military, educational, family medical, children's educational activity, disaster service volunteer, organ donor leave and shared leave

When requesting annual, sick, holiday or comp leave in less than 1 hour increments record it as follows: (.25) for a quarter hour, (.50) for a half hour and (.75) for three quarters of an hour.

## 6.1 Annual Leave

This policy provides a framework for taking and managing annual leave, which is consistent with the policies and procedures of the Office of Personnel Management (OPM).

Annual leave (also known as vacation leave) shall be granted to full-time regular, probationary, and part-time ADE employees. Employees will use leave appropriately to comply with policy and adhere to applicable laws, rules, and procedures.

An employee who works a minimum of 1500 hours per year in a regular salary position shall accrue annual leave as worked according to the timetable below. Employees who work less than full-time, accrue annual leave in the same proportion as time worked. *Annual leave shall not be granted to emergency, hourly, intermittent, or per diem employees.*

ADE eligible employees receive credit for earned leave on a semi-monthly basis, and the rate of leave accrued is based on the years of service and hire date. Employees may use leave in accordance with ADE's protocol and may carry forward a yearly maximum amount.

Annual leave is earned before it can be used. An employee may not borrow from leave before accrued and may not use annual leave earned by other employees. An employee continues to accrue annual leave at their normal rates when on annual leave, sick leave, holiday leave, paid family medical leave, and when taking compensatory time. Annual leave does not accrue for a calendar month during which the employee was on leave without pay totaling ten (10) or more days.

***(If an employee has a balance of Compensatory time, it must be used prior to using annual leave unless you are in a "use or lose" annual leave situation at the end of the calendar year.)***

Regular full-time employees accrue leave at the rates shown in the timetable listed below. Employees who work less than full-time per year accrue annual leave in the same proportion as time worked. For example, employees who work half-time would receive half of the annual leave accrual shown on the timetable.

Accrual will be posted at 12:01 a.m. on the last day of every month. ADE's leave year is January 1st through December 31st. Employees having more than the maximum annual carryover at the end of the leave year will not be allowed to retain or "carry over" the amount above the maximum into the next leave year.

Years of Employment	Monthly	Annually
Through 3 years (1 through 36 months)	1 day (8 Hours)	12 Days
4 through 5 years (37 through 60 months)	1 day 2 Hours (10 Hours)	15 Days
6 through 12 years (61 through 144 months)	1 Day, 4 Hours (12 hours)	18 Days
13 through 20 years (145 through 240 months)	1 day, 6 Hours (14 Hours)	21 Days
Over 20 years (241 + months)	1 Day, 7 Hours (15 Hours)	22.5 Days



For accrual purposes only, employees will accrue half their monthly accrual of annual leave if employed on the first (1st) working day of the month and are in active status on the payroll through the 15th of that month. Employees will accrue half their monthly accrual if employed on the 16th of the month and are in active status on the payroll through the last working day of that month. (If the 16th falls on a weekend or holiday, accrual begins on the first (1st) working day thereafter.)

Annual leave is approved based on workdays, not calendar days. Non-workdays, such as holidays and weekends, are not charged against an employee as annual leave. The minimum leave amount an employee can use is fifteen (15) minutes or in quarter-hour increments.

ADE employees continue to earn annual leave at their normal accrual rate on annual leave, but an employee will not earn annual leave if in leave without pay status for ten (10) or more cumulative days within a calendar month.

The accrual rate is determined by completed years of service. Service credit for rehired employees will be brought forward in completed years of service only for state employment that began on or after July 1, 1975. Service prior to July 1, 1975, will be credited in completed months and years of service.

An ADE employee is prohibited from carrying more than 30 days or 240 hours over to the next calendar year. Accrued annual leave may exceed 30 days during the calendar year, but any annual leave in excess of the allowable carryover amount at the end of the calendar year will be deposited into the OPM Catastrophic Leave Bank unless the employee submits a written request to his or her Human Resources Office requesting to have the excess annual leave forfeited in lieu of it being deposited into the OPM Catastrophic Leave Bank.

Accrued birthday and holiday leave balances do not truncate at the end of the year even if the employee is carrying over 30 days of annual leave at the end of the calendar year.

An ADE employee may request to use accrued annual leave at any time, but the request must be made in advance, when possible, and must be approved by the employee's supervisor. The supervisor may require that the employee take annual leave at those times when it will be most convenient for and least disruptive to the division or work unit.

If an employee transfers to ADE from another state agency or state institution of higher education, without a break in service (within 30 consecutive working days), all accumulated annual leave is retained and transferred. Prior service will also be added to the rate at which annual leave is earned, shown on the Timetable above.

Upon return to state employment, ADE should request a Proof of Prior Service from each agency or state institution of higher education where the employee has previously worked. The employee's accrual rate of annual leave is determined by considering past state employment.

If an employee ends employment with ADE for any reason including termination, retirement as a member of the Arkansas Teacher Retirement System, resignation, or death, the final payment will include a lump sum payment for any accrued unused annual leave. EASE will credit the monthly accrual of annual leave at the first of each month. When an employee ends employment with ADE, the last month's annual leave accrual is pro-rated to reflect the termination date. No employee receiving the lump-sum termination pay shall return to ADE employment until the number of days for which he or she received the lump-sum termination pay has expired. However, the employee may reimburse ADE the lump-sum payment for the number of days paid but not yet expired and return to ADE employment. The reimbursement will result in the appropriate number of days being reinstated to the employee's accrued annual leave.

### **Resignation/Termination /Retirement**

#### **Annual leave**

For a regular state employee, a maximum of 30 working days or 240 hours of accrued unused annual

leave, including holidays and birthdays.

### **Death**

Upon death of an active employee, the amount of any accrued unused annual, holiday, and birthday leave due to the employee (a maximum of 480 hours or 60 working days shall be paid to the employee's estate or authorized beneficiary. A voucher is prepared and payable to the deceased's estate. No payment is made until it has been determined that the deceased employee was not indebted to the state.

## **6.102 Transfer of Leave and Leave Payout**

### **PURPOSE**

Employees transferring between state agencies without a break in service retain their annual and sick leave benefits upon transferring to their new state agency.

### **TRANSFER OF LEAVE POLICY**

Employees transferring between state agencies without a break in service retain their annual leave, including holiday and birthday, and sick leave benefits upon transferring to their new agency. The state agency the employee is transferring from is responsible for paying the balance of any unpaid overtime or unused compensatory time in a lump sum payment. See [OPM Policy #28](#) for more information about overtime and compensatory time.

When an officer or employee of a state office or agency excluded from the provisions of the Uniform Attendance and Leave Act leaves employment of the excluded office or agency and becomes employed by ADE which is subject to the Uniform Attendance and Leave Act, the period of employment with the excluded office or agency shall be included as state employee service for the purpose of determining the rate at which the employee earns paid annual leave.

Upon return to state employment, the employee furnishes proof of prior service and/or the hiring state entity shall request a Proof of Prior Service from each agency or state institution of higher education where the employee has previously worked. The employee's rate of annual leave accrual shall be determined by considering all past state employment.

### **LEAVE PAYOUT POLICY**

When an employee separates employment from a state agency (whether by termination, resignation, death, or retirement), the accrued, unused leave to his or her credit may be paid out as a lump sum. If an employee separates from a state agency and is paid for their annual leave upon separation, the employee is not allowed to return to state employment until he or she has exhausted the number of days for which they were paid annual leave. If the employee separated from state government for 30 working days or less, they have the option of purchasing their unexpired leave balance from the hiring state entity.

#### **❖ Termination/Resignation**

##### **❖ Annual Leave**

For a regular state employee, a maximum of 30 working days or 240 hours, including holidays and birthdays, is paid out.

##### **❖ Sick Leave**

No sick leave is paid out.

##### **❖ Death**

A voucher is prepared and payable to either the deceased's estate or a designated beneficiary. No payment is made until it has been determined that the deceased employee was not indebted to the state.

❖ **Annual leave**

A maximum of 480 hours or 60 working days, including holidays and birthdays.

❖ **Sick leave**

Sick Leave Incentive Payout – An employee or beneficiary cannot receive an amount that exceeds \$7,500. The amount of sick leave paid out is calculated as follows:

- If the employee has accumulated at least 50 days but fewer than 60 days of sick leave, the employee shall receive an amount equal to 50% of the number of accrued sick leave days rounded to the nearest day multiplied by 50% of the employee's daily salary.
- If the employee has accumulated at least 60 days but fewer than 70 days of sick leave, the employee shall receive an amount equal to 60% of the number of accrued sick leave days rounded to the nearest day multiplied by 60% of the employee's daily salary.
- If the employee has accumulated at least 70 days but fewer than 80 days of sick leave, the employee shall receive an amount equal to 70% of the number of accrued sick days rounded to the nearest day multiplied by 70% of the employee's daily salary.
- If the employee has accumulated at least 80 or more days of sick leave, the employee shall receive an amount equal to 80% of the number of accrued sick leave days rounded to the nearest day multiplied by 80% of the employee's daily salary.

The daily salary is determined by dividing the annual salary by 260.

Paid sick leave taken under the Family and Medical Leave Act of 1993 will be added to the employee's final sick leave balance for the purpose of qualifying for the incentive payout; however, the amount paid out is based on the unused sick leave balance at the time of death.

❖ **Retirement**

❖ **Annual leave**

For a regular state employee, a maximum of 240 hours or 30 working days, including holidays and birthdays.

❖ **Sick leave**

If an employee receives compensation for unused sick leave at retirement and returns to state employment, the employee is not required to wait until the expiration of the number of days for which he or she received additional compensation before returning to state employment or to repay the amount of the compensation.

Sick Leave Incentive Payout – An employee or beneficiary cannot receive an amount that exceeds \$7,500. The amount of sick leave paid out is calculated as follows:

- If the employee has accumulated at least 50 days but fewer than 60 days of sick leave, the employee shall receive an amount equal to 50% of the number of accrued sick leave days rounded to the nearest day multiplied by 50% of the employee's daily salary.
- If the employee has accumulated at least 60 days but fewer than 70 days of sick leave, the employee shall receive an amount equal to 60% of the number of accrued sick leave days rounded to the nearest day multiplied by 60% of the employee's daily salary.
- If the employee has accumulated at least 70 days but fewer than 80 days of sick leave, the employee shall receive an amount equal to 70% of the number of accrued sick days rounded to the nearest day multiplied by 70% of the employee's daily salary.

- If the employee has accumulated at least 80 or more days of sick leave, the employee shall receive an amount equal to 80% of the number of accrued sick leave days rounded to the nearest day multiplied by 80% of the employee's daily salary.

The daily salary is determined by dividing the annual salary by 260.

Paid sick leave taken under the Family and Medical Leave Act of 1993 will be added to the employee's final sick leave balance for the purpose of qualifying for the incentive payout; however, the amount paid out is based on the unused sick leave balance at the time of retirement. Upon retirement or death, if the balance of the employee's sick leave does not meet the criteria for a Sick Leave Incentive Payout, the employee or their beneficiary may donate their sick leave to the Catastrophic Leave Program.

When an employee receives a payout for unused sick leave at retirement or death, hours used to calculate the maximum payout of \$7,500 cannot be donated to the Catastrophic Leave Bank. Once the calculation of the number of accrued hours needed to receive a payout has been made, any remaining hours may be donated to the Catastrophic Leave Bank. When an employee is laid off because of budgetary reasons or curtailment of activities and he or she is reinstated within a period of 6 months, accumulated sick leave may be restored to his or her credit.

When an employee is laid off because of budgetary reasons or curtailment of activities and he or she is reinstated within a period of 6 months, accumulated sick leave may be restored to his or her credit.

## RELATED POLICIES

[OPM #28 Overtime and Compensatory Time \(FLSA\)](#)

[OPM #54 Ark. Code Ann. §§ 21-4-204 through 207; 21-4-404; 21-4-501 through 505](#)

*Disclaimer: If any portion of this Policy is found to be in conflict with the Office of Personnel Management (OPM) policies, and/or state and federal laws or rules, the laws, rules and OPM policies will supersede any information /provisions of the Policy.*

## 6.14 Sick Leave Policy

### PURPOSE

Sick leave is a benefit available to ADE employees who work in benefits-eligible positions. This policy describes how paid sick time is accrued and how it may be used.

### BASIC PROVISIONS

Sick Leave Accrual	<p>Employees accrue sick leave at the rate of 1 day (8 hours) for each completed month of service; 4 hours for part-time employees. The maximum sick leave accumulation on December 31 of each year is 960 hours (120 days). Accrued leave may exceed 960 hours during the calendar year, but any accrued, unused leave in excess of 960 hours will be forfeited at the end of the calendar year on December 31. Employees who have a balance of more than 960 hours at the end of the calendar year may donate their excess time to the catastrophic leave bank.</p> <p>Sick leave accrued during a pay period is not considered to be earned by an active employee until the last working day of the month, and the leave must be earned before it can be used. Although accrual for the pay period is entered into the system</p>
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	<p>when payroll is run, sick leave accrued is not available for use until the first day of the following month. Employees are not allowed to borrow from anticipated future accruals.</p> <p>Sick leave is approved based on workdays, not calendar days. Non-workdays, such as holidays and weekends, are not charged as sick leave. The minimum sick leave amount an employee can use is 15 minutes. Absences due to sick leave, except in the case of maternity leave, shall be charged in the following order: (1) earned sick leave; (2) earned annual leave; (3) catastrophic leave; and (4) leave without pay. If an employee does not qualify for catastrophic leave, the employee may request leave without pay.</p> <p>Sick leave may not be accumulated during leave without pay (LWOP), when such leave totals 10 or more cumulative days within a calendar month.</p>
<p>Requesting and Reporting Sick</p> <p>Leave Used</p>	<p>An employee shall be required to furnish to his or her supervisor a certificate from an attending health care provider for five or more consecutive days of sick leave. A certificate from a Christian Science practitioner listed in the Christian Science Journal may be submitted in lieu of a physician's certificate.</p> <p>Requests for sick leave shall be submitted in advance, unless the circumstances make this impracticable. In that event, a request for sick leave must be submitted within two days after the employee returns to work. Whenever possible, the employee should schedule planned medical, dental and optical appointments in a manner that minimizes disruption of office workflow.</p> <p>Unlike annual leave, sick leave may only be used when the employee is unable to work because of sickness, injury or for medical, dental, or optical treatment. Sick leave may also be granted to employees due to the death or serious illness of a member of the employee's immediate family (see definition of immediate family members).</p> <p>The Time and Leave Administrator charges absences due to illness or injury in the following order except when used in connection with maternity leave (see Maternity Leave Policy).</p> <ol style="list-style-type: none"> <li>1. Earned Sick Leave</li> <li>2. Earned Annual Leave</li> <li>3. Catastrophic Leave</li> <li>4. Leave Without Pay</li> </ol> <p>If an employee does not qualify for catastrophic leave, the employee may request leave without pay. An employee should submit a request to their supervisor in advance in the Empowering Arkansas State Employees <a href="#">EASE</a> system.</p>

Definition of Immediate Members	<b>Sick and Funeral Leave</b>	
	<b>Definition of Immediate Family</b>	
	Father	Mother
	Husband	Wife
	Child	Sister
	Brother	Grandchild
	Grandparents	In-laws
	Any individual acting as a parent or guardian of an employee	
Doctor Restrictions	<p>If the ADE employee is recuperating from an injury, an illness, or surgery and the doctor approves their return to work but places restrictions on what they can do, ADE will make every effort to accommodate the restrictions. A statement will need to be provided from the ADE employee's doctor releasing him/her to full duty or identifying their restrictions. The supervisor will review the restrictions to determine whether the employee can successfully carry out the job responsibilities within the limitations they impose. The employee's physician may be contacted to obtain further information about the restrictions.</p>	
Worker's Compensation with Sick Leave	<p>If the absence from work is due to a temporary occupational illness or injury, and the employee is entitled to workers' compensation benefits, the employee may use sick leave to supplement the workers' compensation. The employee's weekly pay from both sources may be equal to (but does not exceed) their normal pay at the time of the injury or onset of the illness. The accrued sick leave will be reduced by the amount used to supplement workers' compensation.</p>	
Transfer of Sick Leave from One State Agency to Another State Agency or Institutions of Higher Education and Payout	<p>Employees transferring without a break in service between state agencies that are covered by this policy will retain all accumulated sick leave.</p> <p>If an employee is terminated due to a reduction in force, the employee will have all accrued sick leave restored if the employee returns to state employment within six (6) months of termination.</p> <p>Employees are not entitled to payment for earned but unused sick leave when they terminate their employment; however, they may be eligible for a payment when they retire, or if they die. The leave will go to their designated beneficiary. No payment is made until it has been determined that the deceased employee was not indebted to the state.</p> <p>An employee who returns to state employment within 30 consecutive working days</p>	

	<p>is considered a transfer, and sick leave that was earned but unused before separation from employment will be reinstated.</p> <p>If an ADE employee receives pay for unused sick leave at retirement and returns to state employment, they are not required to wait the number of days for which they received the sick leave pay, nor are they required to repay the sick leave compensation.</p>
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## OTHER INFORMATION

- Payment of accrued sick leave benefits will begin on the first day of absence, computed at the employee's regular base pay. If a holiday falls within a paid sick leave, that day will be counted as a holiday and not as sick leave.
- In unusual medical emergencies, a written request for limited non-FMLA leave without pay may be submitted for approval. To be considered for this LWOP you must submit, in advance, a written request with justification for such leave. Request for Leave requires approval of your supervisor and other administrators. After administrative approvals are obtained, the request is sent to the Human Resources Office for review and recommendation. The Secretary of Education makes the final decision.
- Sick leave will not be considered work hours for computing overtime pay.
- When an employee requests annual/vacation time for a definite period and the request is granted, any period of illness during the period of such leave shall be charged to sick leave upon the employee producing a written certificate from a licensed health care provider stating the duration of the illness and the time period that the employee would not have been able to work.
- For information regarding calculating sick leave incentive pay for retirees, please refer to the [Leave Transfer and Leave Payout Policy #54](#).
- For information regarding public school employees transferring to ADE, please refer to Ark. Code Ann. § 6-17-1206.
- For information on employees who do not accrue sick leave please refer to [TSS Sick Leave Policy Number: 59](#)

Fraudulent claims of illness or injury and/or patterns of abuse of sick leave may result in disciplinary action, up to and including termination.

## 6.2 Catastrophic Leave Bank Program

### Purpose

The purpose of this policy and the accompanying procedure is to establish a Catastrophic Leave Bank Program to be administered by the Office of Personnel Management (OPM) of the Department of Transformation and Shared Services (TSS). The Catastrophic Leave Bank Program creates no expectation or promise of continued employment with a state agency and is intended to assist eligible

employees during medical emergencies and for maternity purposes a Catastrophic Leave Bank Program for the exclusive use of the regular, full-time employees of ADE as authorized by Ark Code Ann. §§ 21-4-203, 21-4-209 and 21-4-214 and according to the rules and regulations approved by the TSS - OPM. ADE's Catastrophic Leave Bank Program creates no expectation or promise of continued employment with ADE and is intended simply to assist eligible employees during medical emergencies.

## Definitions

**Catastrophic Leave Bank:** A pool of accrued annual and sick leave voluntarily donated by employees which may be approved for use by employees who meet the eligibility requirements for medical emergency due to illness/injury and/or for maternity purposes.

**Catastrophic Illness:** A medical condition of an employee, spouse, parent of the employee, or a child of the employee, as certified by a physician or other appropriate healthcare provider that requires an employee's absence from duty for a prolonged period of time and which, except for the catastrophic leave program, would result in a substantial loss of income to the employee because of the exhaustion of all earned accrued leave, holiday and compensatory leave.

**Catastrophic Leave for Maternity Purposes:** An eligible female employee may receive up to four consecutive weeks of paid leave within the first 12 weeks after the birth of the employee's biological child or placement of an adoptive child in the employee's home.

**Prolonged Period of Time:** An extended period of time whereby a medical condition prevents the employee from performing the employee's duties. The period of time may be continuous or intermittent, except for maternity purposes, which must be continuous.

**Medical Condition:** Emergencies limited to catastrophic and debilitating medical situations, severely complicated disabilities and/or severe accidents of the employee or a qualifying family member that could not have been anticipated and which cause the employee to be unable to perform his/her job, require a prolonged period of recuperation and/or require the employee's absence from duty as documented by a physician or other appropriate healthcare provider. Elective surgery does not qualify as a medical condition for catastrophic leave purposes.

**For Maternity Purposes,** the birth of the employee's biological child or placement of an adoptive child in the employee's home is the medical condition. Approved catastrophic leave will be granted for the birth of the employee's biological child effective the date of the birth or after and approved catastrophic leave will be granted for the placement of an adoptive child in the employee's home effective the date the child is placed in the home or after, but both within the first 12 weeks after the birth or placement.

**Dependent Child Certification:** Complete the "[Dependent Child Certification Form](#)," sign and attach to the catastrophic leave request. If the child was acquired after the most current income tax filing, provide other proof, i.e., birth certificate, adoption order, etc.

**Substantial Loss of Income:** A continuous period of time where the employee will not be compensated by the employing state agency due to a medical condition after the exhaustion of all earned sick, annual, holiday and compensatory leave. This requirement does not apply for maternity purposes.

**Onset of the Illness or Injury:** the initial beginning, or start, as certified by a physician or other appropriate healthcare provider, of the medical condition which created the need for the catastrophic leave request. If a recurrence of the same illness necessitates a subsequent catastrophic leave request, the eligibility requirement that the employee has 80 hours of combined sick and annual leave at the onset of the illness shall not be required on the illness recurrence date.

## Eligibility Requirements for Catastrophic Leave



1. The applicant must be a regular, benefits-eligible, full-time, employee of a state agency to be eligible to participate. A person who works less than full-time (40 hours per week) or who is in an extra-help position is ineligible to participate as a recipient in the Catastrophic Leave Bank Program; an employee in a regular, part-time position may elect to donate annual and sick leave.
2. The employee must have been employed by the State of Arkansas for at least one year in a regular, full-time position.
3. Employees with a medical emergency must have exhausted all accumulated sick, annual, holiday and compensatory leave, and, at the "onset of the illness or injury", had to his or her credit at least 80 hours of combined sick and annual leave. For maternity purposes, the 80 hours of combined sick and annual leave credit is not required at the time of application for catastrophic leave.
4. The "80-hour requirement" for a medical emergency due to illness/injury may be waived for an otherwise eligible employee if an "extraordinary circumstance" is declared by an ADE commissioner due to the applicant providing documentation that one of the following conditions has occurred:
  - a. The employee applying for catastrophic leave had, during the previous one year period, another medically documented illness or injury which was not compensated under an approved Catastrophic Leave Bank Program, but was documented under the Family and Medical Leave Act (FMLA) as a qualifying event, and caused the exhaustion of all sick and annual leave, or
  - b. The employee applying for catastrophic leave had, during the previous one year period, exhausted his or her sick and annual leave as a direct result of supplementing workers' compensation benefits, which were received as a result of an on-the-job illness or injury with the State of Arkansas.
5. If the medical condition is due to illness/injury or for maternity purposes and the employee is covered by workers' compensation, the compensation based on approved catastrophic leave, when combined with the weekly workers' compensation benefit received by the employee, shall not exceed the compensation being received by the employee at the onset of the illness/injury or maternity leave.
6. The employee has not received a documented disciplinary action for leave abuse during the past one year period from the date of application. This requirement does not apply for maternity purposes.
7. An employee shall not be approved for catastrophic leave unless that employee is, or is reasonably expected to be, on leave-without-pay (LWOP) status as a result of the catastrophic illness/injury. This requirement does not apply for maternity purposes.
8. An employee is eligible for approved catastrophic leave due to injury/illness for a maximum of six months (1,040 hours) within a five year period. Additional requests within the five year period may be submitted for review and determination by the OPM Catastrophic Leave Bank Committee and State Personnel Administrator. This requirement does not apply for maternity purposes.
9. The combination of catastrophic leave for the stated medical conditions, due to illness/injury or for maternity purposes, received by an employee may not exceed 1,200 hours in a calendar year (1,040 hours for illness/injury and 160 hours for maternity purposes).
10. The Catastrophic Leave Bank Committee shall not grant an employee catastrophic leave beyond the date certified by a physician or other appropriate healthcare provider for the employee to return to work.
11. An employee shall not be approved for catastrophic leave for a medical emergency unless that employee has provided an acceptable medical certificate from a physician or other appropriate health care provider supporting the continued absence and setting forth that the employee is,

and will continue to be unable to perform the employee's duties due to a catastrophic illness/injury of the employee or a qualifying family member. The employee is responsible for providing information regarding his/her assigned job duties to the physician in order to have a more accurate medical certification. This requirement does not apply for maternity purposes.

12. An employee shall not be approved for catastrophic leave for a maternity purpose unless the employee has provided acceptable proof of the birth or placement. For the birth of an employee's biological child, acceptable proof includes a hospital announcement with the mother's name and/or the biological child's name, hospital discharge papers with the mother's name and the biological child's name, or a birth certificate of the biological child. For the placement of an adoptive child in an employee's home, acceptable proof includes the following:

- a. Formal document from the placement entity with the mother's name and the child's name  
or
- b. Legal guardianship papers with the mother's name and the child's name.

The acceptable proof will be maintained by the agency submitting the request but certified as part of the application process or as follow-up to the application using the Maternity Purposes Eligibility Date Verification form.

### **Donations of Leave to the OPM Catastrophic Leave Bank**

The agency commissioner or designee shall screen leave donated by the employees of that agency to ensure that the following criteria are met:

1. Accrued leave may only be donated to the OPM Catastrophic Leave Bank in one hour increments.
  - a. Donations of leave shall be granted hour-for-hour and not dollar-for-dollar.
2. No employee of ADE shall be allowed to donate leave to the OPM Catastrophic Leave Bank if such donation reduces that employee's accrued sick and annual leave balance to less than 80 hours. This restriction does not apply to employees who are terminating employment.
3. Annual and/or sick leave which has been donated to the OPM Catastrophic Leave Bank will not be restored to the employee who donated the leave time.
4. Approved donations of leave will be transmitted to the OPM Catastrophic Leave Bank by submitting the Donation of Annual and Sick Leave form.

### **OPM Catastrophic Leave Bank Committee**

**Membership:** The OPM Catastrophic Leave Bank Committee encompasses employees of various agencies. The Committee members shall be comprised of a rotating registry of agency employees with the majority having a medical (licensed) or medically related background. Members shall elect a Committee chairperson.

**Responsibility:** The purpose of the Committee is to review all medical emergency catastrophic leave requests and make recommendations for approval, denial or pending for additional information or clarification. The Committee will reconsider applications submitted by the State Personnel Administrator as requested by ADE commissioner or as deemed appropriate.

### **Catastrophic Leave Bank Program Administration**

1. Donations to or applications for catastrophic leave and related forms and documentation shall be submitted to the employee's human resources office or to the employee's agency

commissioner/designee for review and completion of the donation or application for eligibility and forwarded to OPM by confidential methods. The completeness and accuracy of information and supporting documentation is the responsibility of the agency.

2. The OPM Catastrophic Leave Bank Coordinator and/or designee will be responsible for the following:
  - a. Donations of annual and sick leave or accrued annual and sick leave to the Catastrophic Leave Bank**
    - i. Review and record keeping of annual and sick leave submitted by donors; and
    - ii. Review and record keeping for return of accrued annual and sick leave and approved unused leave.
  - b. Applications for Catastrophic Leave for Medical Emergencies due to illness/injury**
    - i. Application review for completeness, eligibility and coordination of the information to be presented to the Committee chairperson and members for review and determination;
    - ii. Creation of agenda and minutes for each meeting; and
    - iii. Record keeping of determinations; distribution of Committee determinations.
  - c. Applications for Catastrophic Leave for Maternity Purposes**
    - i. Application review for completeness, eligibility and coordination of the information;
    - ii. Record keeping of the determinations; and
    - iii. Distribution of the determinations.
3. If ADE commissioner does not agree with any of the determinations, an appeal may be made to the State Personnel Administrator for reconsideration by the Committee.
4. Agency commissioner shall not grant catastrophic leave to an employee prior to the OPM approval or catastrophic leave exceeding the OPM approval.
5. Catastrophic leave is granted or donated in one-hour increments only, not on a monetary basis.
6. Catastrophic leave shall not be awarded retroactively; for maternity purposes, catastrophic leave may be awarded up to 12 weeks after the birth of a biological child or placement of an adoptive child, but shall not begin prior to February 16, 2017, and shall not exceed four continuous weeks.
7. Catastrophic leave which would result in a negative balance in the OPM Catastrophic Leave Bank shall not be approved.
8. Employees in a catastrophic leave status, for a medical emergency due to illness/injury, during a period of 10 or more days in a month, will have the accrued annual and sick leave for the month returned to the OPM Catastrophic Leave Bank; if the employee in a catastrophic leave status, for a medical emergency due to illness/injury, accrues holiday and birthday leave during that time, the accrued holiday and birthday leave will be removed through a quota correction and the days will be reflected as paid catastrophic leave. Holiday and birthday leave will not be returned to the OPM Catastrophic Leave Bank.

The leave codes and categories for catastrophic leave due to a medical emergency are CATL – Catastrophic Leave and FMLT – Family Medical Leave Catastrophic.

1. Employees in a catastrophic leave status, for maternity purposes, during a four week period, will have the accrued annual and sick leave removed for the month the catastrophic leave status begins through time evaluation; if the employee in a catastrophic leave status, for maternity purposes, accrues birthday leave during that time, the accrued birthday leave will be removed at the time of the birthday through time evaluation; if the employee in a catastrophic leave status, for maternity purposes, accrues holiday leave during that time, the holiday leave will have to be manually removed through a quota correction for non-exempt employees. Birthday and holiday leave during the catastrophic maternity leave period will be reflected as paid catastrophic leave.

No accrued leave, annual, sick, holiday and/or birthday leave, will be returned to the OPM Catastrophic Leave Bank.

The leave codes and categories for catastrophic leave due to maternity purposes are CATM – Catastrophic Leave Maternity and FMMC – Family Medical Leave Maternity Catastrophic Leave.

1. Employees receiving catastrophic leave for a medical emergency due to illness/injury or for maternity purposes will receive their normal rate of pay and normal state benefits, such as agency contributions to insurance and retirement.
2. The use of catastrophic leave for a medical emergency or maternity purposes will not change an employee's merit eligibility date.
3. In the event an employee receiving catastrophic leave for a medical emergency due to illness/injury, returns to work, terminates, retires, or dies prior to expiration of previously approved catastrophic leave, all approved unused catastrophic leave shall be returned to the OPM Catastrophic Leave Bank.
4. An employee may be dismissed if such employee fails to report to work promptly at the expiration of the period of approved catastrophic leave. Nothing, however, shall prevent the agency from accepting satisfactory reasons provided by the employee, in advance of the date the employee is scheduled to return to work, and from granting leave without pay status to an employee prior to or after the expiration of such catastrophic leave if, in the view of the agency commissioner, such action is warranted. Supervisors should not take disciplinary action for such leave until the application has been formally approved or denied.
5. Alleged or suspected abuse, misrepresentation or fraud of the OPM Catastrophic Leave Bank Program shall be investigated by OPM and the employee's agency, and on a finding of wrongdoing, an employee shall repay all of the leave hours awarded from the OPM Catastrophic Leave Bank and shall be subject to such other disciplinary action as recommended by the State Personnel Administrator and determined by the agency commissioner.
6. Approved catastrophic leave for a medical emergency or for maternity purposes shall be applied concurrently with the Family and Medical Leave Act, if the employee is eligible.
7. Recommendations of the OPM Catastrophic Leave Bank Committee or the State Personnel Administrator are not subject to grievance, arbitration or litigation.

## **Record Keeping**

The OPM Catastrophic Leave Bank record keeping procedure shall track the following:

1. The amount of leave donated by each employee, the rate of pay, and dollar value of such donated leave at the time of donation;
2. The amount of catastrophic leave awarded and returned, including the name of the recipient, position number, rate of pay and personnel number; and
3. Any other such data as required by the DFA Commissioner or the State Personnel Administrator.

## **Prohibition of Coercion**

An employee may not directly or indirectly intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce, another employee for the purpose of interfering with that employee with respect to donating, receiving or using annual or sick leave. Any report of such described instances shall be reported in writing to the commissioner/head of the participating agency/institution. All written reports of such described instances shall be investigated thoroughly and appropriate disciplinary action may be taken for any substantiated violation.

## 6.3 Court and Jury Leave: Reference

Court and jury leave may be approved for the following reasons:

- Employee is either a plaintiff or a defendant in a court proceeding related to work;
- Employee is summoned as a Juror in either a civil or criminal proceeding; or
- Employee is served a subpoena to serve as a witness either for or against a defendant in a court proceeding.

ADE encourages employees to fulfill their civic responsibilities when required. An employee serving as a juror or subpoenaed as a witness to give a deposition in a court or hearing, not involving personal litigation or service as a paid expert witness outside the scope of state employment, shall be entitled to Full compensation in addition to Any fees paid for such services; and such services or necessary appearances in any court shall not be counted as annual leave. An employee should indicate leave correctly. **Employees must attach a copy of any summons to appear with the leave form and submit to their supervisor as soon as possible. They must provide a signed notice from the Clerk of Courts verifying the time they were in the court.**

If the employee provides reasonable notice to ADE of the required proceeding, the employee shall not be subject to discharge from employment, loss of annual or sick leave days, accrual rates or any other form of penalty. (Ark. Code Ann. §21-4-213)

If an employee has a court appearance for personal or family reasons, an appropriate annual leave form must be submitted **to his/her** supervisor. Court and jury leave is not approved for non-mandated appearances or for personal legal matters.

## 6.4 Emergency, Disaster Service, Volunteer/Rescue Service Leave

### EMERGENCY PAID LEAVE

The Secretary of Education is authorized to grant emergency paid leave to ADE employees who suffer the loss of, or substantial damage to, their principal place of residence due to tornadoes, high winds, rain, flooding, or other severe weather conditions. The emergency paid leave may not exceed forty (40) hours. The Secretary of Education may only grant this leave to employees whose principal place of residence is located in a county that has been declared a disaster area by the Governor as a result of severe weather.

ADE shall maintain records of the amount of emergency paid leave claimed and forward their reports to the Office of Personnel Management.

Employees may use additional earned leave time over and above the emergency paid leave granted if approved by the Secretary of Education.

### DISASTER SERVICE VOLUNTEER LEAVE

An ADE employee may be granted leave with pay for not more than fifteen (15) working days in any calendar year to participate in specialized disaster relief, without loss of seniority, pay, annual leave, sick leave, compensatory time, offset time, or overtime wages, if the employee:

1. Is trained and certified as a disaster service volunteer by the American Red Cross;
2. Has specialized disaster relief services that are requested by the American Red Cross in connection with a disaster; and
3. Obtains consent from the Secretary of Education.

Leave shall only be granted for disaster relief services occurring within Arkansas or states contiguous to Arkansas.

The employee shall receive their regular rate of pay for the regular work hours during which the employee is absent from work.

The number of certified disaster service volunteer state employees and institution employees shall not be greater than 100 at any one time.

Within 60 days of the request, the American Red Cross will prepare a report to submit to the Department of Finance and Administration stating the reasons and needs for the request.

With regard to the Employee Request for Leave form, these two types of leave shall be specified in the leave category and codes as follows:

1. An ADE employee receiving emergency paid leave will be categorized as “other” in the EASE system leave form and coded as PROL.
2. An ADE employee receiving disaster service volunteer leave will be categorized as “other” in the EASE system leave form and coded as DSTR.

## EMERGENCY AND RESCUE SERVICES

An ADE employee who is a member of the following is entitled to fifteen (15) working days of paid leave in a calendar year to participate in a training program or in emergency and rescue services:

1. The United States Air Force Auxiliary Civil Air Patrol or the United States Coast Guard Auxiliary. The leave must be at the request of the employee’s wing commander, the wing commander’s designated representative, or District 15 Captain; or
2. The National Disaster Medical System, a Disaster Mortuary Operational Response Team, or a Disaster Medical Assistance Team, of the Office of Emergency Management of the Office of the Assistant Secretary of Preparedness and Response of the United States Department of Health and Human Services. The absence must be in response to a United State Department of Health and Human Services National Disaster Team Alert Order.

## RELATED POLICIES

OPM #50 Ark. Code Ann. §§ 12-85-102 and 21-4-104

*Disclaimer: If any portion of this Policy is found to be in conflict with the Office of Personnel Management (OPM) policies, and/or state and federal laws or rules, the laws, rules and OPM policies will supersede any information /provisions of the Policy.*

## 6.5 Family and Medical Leave Policy

The Family and Medical Leave Act is a federal law that allows employees to balance their work and family life by taking reasonable unpaid leave for certain family and medical reasons. The FMLA seeks to accomplish these purposes in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal employment opportunity for men and women.

**Group Health Plan:** A plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to employees, former employees, the employer, or others associated or formerly associated with the employer in a business relationship, or their families.

**Health Care Provider:** A doctor of medicine or osteopathy who is authorized to practice medicine or

surgery by the State in which the doctor practices; or any other person determined by the United States Department of Labor to be capable of providing health care services. Included in the second part of that definition are podiatrists, dentists, clinical psychologists, clinical social workers, optometrists and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated to exist by x-ray), nurse practitioners and nurse-midwives and Christian Science Practitioners.

**In Loco Parentis:** Those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee when the employee was a child, even if they have no legal or biological relationship.

**Parent:** A biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."

**Period of Incapacity:** A period of time when an employee or family member is unable to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery

**Serious Health Condition** - An illness, injury, impairment, or physical or mental condition that involves:

1. **Inpatient care:** Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice or residential medical care facility;
2. **Continuing treatment by a health care provider:** Any period of incapacity of more than three consecutive calendar days, that also involves continuing treatment as follows:
  - a. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a health care provider; or
  - b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under supervision of a health care provider. A regimen of continuing treatment includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. It does not include the taking of over-the-counter medications or other similar activities that can be initiated without a visit to a health care provider.
3. Any period of incapacity due to pregnancy, or for prenatal care.
4. Treatment for a chronic health condition: 1) requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider, 2) continues over an extended period of time (including recurring episodes of a single underlying condition), and 3) may cause episodic rather than a continuing period of incapacity (asthma, diabetes, epilepsy, etc...).
5. A period of incapacity: Permanent or long-term incapacity due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include: Alzheimer's', severe stroke or the terminal stages of a disease.
6. Multiple treatments for non-chronic conditions: Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition such as cancer, severe arthritis, or kidney disease that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment. FMLA only allows leave for substance abuse in order to undergo treatment by a health care provider and specifically

excludes employee absence because of the use of the substance. Stress qualifies as a serious health condition only if it rises to the level of a mental illness or results in a physical illness.

**Son or Daughter:** A biological, adopted, foster child, stepchild, legal ward or a child of a person standing in loco parentis who is;

1. Under 18 years of age; or
2. 18 years of age or older and incapable of self-care because of mental or physical disability at the time the FMLA leave is to commence.

**Spouse:** Determined by applicable state law and U.S. Supreme Court decisions.

**Treatment:** For purposes of FMLA, includes examinations to determine if a serious health condition exists and evaluations of the condition, but does not include routine physical examinations, eye examinations, or dental examinations.

## **ELIGIBILITY**

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

Spouses who are both employed by the state are entitled to a total of 12 weeks of leave (rather than 12 weeks each) for the birth or adoption of a child or for care of a sick parent. However, each spouse would be entitled to 12 weeks for their own serious health condition or the care of a child or spouse. Each employee is entitled to FMLA for the care of his/her parent only. Nevertheless, the marital couple is limited to a combined 12 weeks for this purpose regardless of which parent or the number of parents involved.

## **LEAVE ENTITLEMENT**

The Family and Medical Leave of 1993 (FMLA), entitles "eligible" employees to a total of 12 workweeks of leave during any 12-month period for one of the following reasons:

1. The birth of a son or daughter, and to care for the newborn child;
2. The placement with the employee of a son or daughter for adoption or foster care;
3. The care of the employee's spouse, son or daughter, or parent with a serious health condition; and,
4. A serious health condition that makes the employee unable to perform the functions of the job.

The 12-month period used by the state for determining eligibility is the calendar year. In the case of birth or adoption, eligibility for FMLA leave shall expire at the end of the 12-month period beginning on the date of a child's birth or placement. However, leave used for this purpose shall also be calculated on a calendar year basis.

The National Defense Authorization Act of 2008 amended the Family Medical Leave Act to provide eligible employees leave rights related to military service. The new leave entitlements are:

1. **Qualifying Exigency Leave:** Eligible employees are entitled to up to 12 weeks of leave in a calendar year because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation. The qualifying exigency's for which employees can use FMLA leave are:
  - a. Short-notice deployment
  - b. Military events and related activities
  - c. Childcare and school activities
  - d. Financial and legal arrangements



- e. Counseling
  - f. Rest and recuperation
  - g. Post-deployment activities
  - h. Additional activities not encompassed in the other categories, but agreed to by the employer and employee
2. **Military Caregiver Leave:** Eligible employees who are the spouse, parent, child, or next of kin of a service member who incurred a serious injury or illness on active duty in the Armed Forces may take up to 26 weeks of leave in a calendar year to care for the injured service member. Military Caregiver Leave is used in combination with regular FMLA leave.

## **DESIGNATION OF FAMILY AND MEDICAL LEAVE**

### **Employee Notice**

The employee's notice to the employer may be verbal or written. The first time the employee requests leave, the employee is not required to specifically mention the FMLA. However, the employee is required to provide enough information for the employer to know that the leave may be covered by the FMLA, and when and how much leave the employee anticipates needing to take.

If possible, the employee shall provide the employer with a completed Certification of Physician or Practitioner form 30 days prior to the date leave begins and make efforts to schedule leave so as not to disrupt ADE operations when the necessity for leave is foreseeable such as for the birth or adoption of a child, or planned medical treatment. If circumstances require that leave begin in less than 30 days, the employee shall provide such notice as is practical. In cases of illness, the employee will be required to report periodically on his or her status and intention to return to work.

### **Employer Notice**

If ADE has knowledge that an employee's requested leave period is covered by FMLA, it is the responsibility of ADE to notify the employee that they have been placed on FMLA leave. The employer must determine whether leave will be counted within **5 business days** of the time the employee gives notice of the need for leave, or if the employer does not initially have sufficient information to make a determination, at the point this information become available.

Each time employers are required to provide the eligibility notice, they must also provide employees with a rights and responsibilities notice, notifying employees of their obligations concerning the use of FMLA leave and the consequences of failing to meet those obligations.

If the employer learns that the leave is for an FMLA purpose after leave has begun or within two days of the employee's return to work, the entire or some portion of the leave period may be retroactively counted as FMLA. An employee desiring to have a leave period designated as FMLA and obtain FMLA protections for the absence must notify the employer within two business days of returning to work.

### **Substitution of Paid Leave**

FMLA leave is without pay. However, if an eligible employee has accrued, unused leave, the employee may choose to use, or employers may require the employee to substitute, such paid leave, including any paid shared leave and catastrophic leave benefits, for any FMLA leave taken during the 12-week period, with the exception that an employee taking maternity leave is not required to substitute accrued, unused leave while on FMLA leave. Paid leave to handle personal and family medical needs is currently available under existing sick, annual, shared, and catastrophic leave policies.

### **Intermittent/Reduced Leave Schedule**

FMLA may be taken "intermittently or on a reduced leave schedule" under certain circumstances.

1. So long as it does not result in a reduction in the total amount of leave to which the employee is entitled. Only the amount of leave taken may be counted toward the 12 weeks of leave to which an employee is entitled. For example, if an employee who normally works five days a week takes one day, the employee would use 1/5 of a week of FMLA Leave.

2. When medically necessary. If an employee requests intermittent leave that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position with equivalent pay and benefits but which better accommodates recurring periods of leave.
3. When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. Such a schedule reduction might occur where an employee, with the employer's agreement, works part-time after the birth of a child, or takes leave in several segments. The employer's agreement is not required for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.
4. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work.
5. An employee may request leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or doctor(s) representing the birth parent, or submit to a physical examination.
6. An employee may request intermittent or reduced leave schedule to care for a family member in situations where the family member's condition itself is intermittent or where the employee may be needed to share care responsibilities with another party or to make arrangements for changes in care, such as transfer to a nursing home.
7. For a serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time.
8. For absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he/she does not receive treatment by a health care provider.

## **CERTIFICATION**

A request for leave for an employee's own serious health condition or to care for seriously ill child, spouse or parent must be supported by a certificate issued by a health care provider. The certificate must contain the following information:

1. The date on which the serious health condition commenced.
2. The probable duration of the condition.
3. The appropriate medical facts within the knowledge of the health care provider regarding the condition.
4. If the leave is to care for a family member, the certificate must contain a statement that the eligible employee is needed to care for the son, daughter, spouse or parent and an estimate of the amount of time required.
5. If the leave is due to the employee's illness, a statement that the employee is unable to perform the functions of the position must be included.

The employer must allow the employee at least **15 calendar days** to obtain the medical certification.

## **Confidentiality**

Medical information as a result of the serious health condition is considered confidential. If an employee submits a complete certification signed by a health care provider, the employee's supervisor may not request additional information from the employee's health care provider. However, a human resources professional, a leave administrator, another health care provider, or a management official

may contact the employee's health care provider for purposes of clarification and authenticity of the medical certificate.

### **Second Medical Certification**

If there is reason to doubt the validity of a medical certification, the employer may require a second opinion from a health care provider designated or approved by the employer so long as that provider is not employed by the state on a regular basis.

### **Third Medical Certification**

If that opinion differs, the opinion of a third health care provider jointly approved by the employer and employee may be solicited. That opinion shall be final and binding. The opinions of both the second and third health care providers shall be obtained at the employer's expense.

The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third health care provider. If the employer does not attempt in "good faith" to reach agreement, the employer will be bound by the first certification. If the employee does not attempt in "good faith" to reach agreement, the employee will be bound by the second certification.

### **Recertification**

The employer may request the employee to provide a recertification no more often than every 30 days and only in connection with an absence by the employee. If a certification indicates that the minimum duration of the serious health condition is more than 30 days, the employer must generally wait until that minimum duration expires before requesting recertification. However, in all cases, including cases where the condition is of an indefinite duration, the employer may request a recertification for absences every six months.

The employer may request a recertification in less than 30 days only if:

1. The employee requests an extension of leave,
2. The circumstances described by the previous certification have changed significantly, or
3. The employer receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification.

## **EMPLOYMENT AND BENEFITS PROTECTION**

### **Health Benefits**

The employer shall maintain benefits coverage for the employee under its group health plan at the same level and under the conditions coverage would have been provided if the employee had continued in employment. The employer shall continue to pay the "employer matching" portion of the health insurance premium and the employee will pay the employee's portion if such was the arrangement prior to leave. If the employer paid the full premium it must continue to do so.

The same group health plan benefits provided to the employee prior to taking FMLA leave must be maintained during the FMLA leave. Therefore, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, etc. must be maintained during leave if provided in an employer's group health plan, including a supplement to a group health plan whether or not provided through a flexible spending account or other component of a cafeteria plan.

An employee may choose not to retain health coverage during leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, without any qualifying period, physical examination, exclusion of preexisting conditions, etc.

An employer's obligation to maintain health benefits under FMLA stops if and when an employee informs the employer of an intent not to return to work at the end of the leave period, or if the employee fails to return to work when the FMLA leave entitlement is exhausted. The employer's obligation also stops if an employee's premium payment is more than 30 days late. Written notice to the employee that the payment has not been received must be mailed at least 15 days before coverage is to cease.

The employer may recover any payments made by the employer to cover the employee's share of the premium once the employee returns to work. An employer may recover its share of health plan premiums paid during unpaid FMLA if the employee fails to return to work unless the failure to return to work is due to a serious health condition or other circumstances beyond an employee's control. If an employer has maintained other benefits such as life or disability insurance in order to meet its responsibilities to provide equivalent benefits to the employee upon return from FMLA leave, the employer is entitled to recover the costs incurred for paying the premium whether or not the employee returns to work.

### **Job Restoration**

Upon return from FML an employee shall be entitled to be restored to (a) the position formerly occupied or (b) a position with equivalent employment benefits, pay and other terms and conditions of employment.

Apart from the paid leave actually used during the FML period, the taking of leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. However, no seniority or employment benefits shall be accrued during the period of leave. The employee is not entitled to any right, benefit, or position of employment other than any right, benefit or position to which the employee would have been entitled had the employee not taken leave.

### **RECORD KEEPING REQUIREMENTS**

Employers must keep the following records for no less than three years and make them available for inspection, copying and transcription by the Department of Labor representatives upon request:

1. Basic payroll and identifying employee data, including name, address and occupation; rate or basis of pay in terms of compensation; daily and weekly hours per pay period (unless FLSA exempt); additions to or deductions from wages; and total compensation paid;
2. Dates FMLA leave is taken.
3. If FMLA is taken in increments of less than one full day, the hours of the leave.
4. Copies of employee notices of leave furnished to the employer, if in writing and copies of all general and specific notices given to employees as required under FMLA and its regulations.
5. Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave.
6. Premium payments of employee benefits.
7. Records of any dispute between the employer and the employee regarding designation of leave as FMLA leave including employer requests for second or third medical opinions.
8. Employer/employee agreement on work schedules during intermittent or reduced schedule leave.
9. Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members, must be maintained in separate files and be treated as confidential medical records. The only persons who can obtain access to these confidential records are:
  - a. supervisors and managers who need to be informed of restrictions on the work or duties of an employee and necessary accommodations;
  - b. first aid and safety personnel if an employee's physical or medical condition might require emergency treatment; and

- c. government officials investigating compliance with the FMLA (29 CFR 825.500(a)).

The general rule established by the statute is that the Department of Labor may only require an employer to submit its books or records for review once during any 12-month period. However, if the Department of Labor has reasonable cause to believe an employer has violated the FMLA or its regulations, or if the DOL is investigating an employee complaint, it may request or subpoena an employer's books or records at any time.

## **OTHER LAWAS AND EMPLOYER PRACTICES ON FMLA Employee Rights**

### **A. State Law**

Nothing in FMLA supersedes any provision of state law that provides greater family or medical leave rights than those provided by FMLA. For example, State of Arkansas employees who take maternity leave have the option to reserve annual and sick leave balances when on FMLA leave. Even though the employer would normally require employees to use their leave balances during FMLA leave, state law, with regard to maternity leave, extends certain exceptions.

### **B. Americans with Disabilities Act (ADA)**

ADA's "disability" and FMLA "serious health condition" are different concepts and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employers to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

In cases where the two laws interact, i.e. the employee is eligible under both, the employer should provide the greater right to the employee. A disabled employee may be entitled to continuous, reduced schedule, or intermittent leave as "reasonable accommodation", and that leave may also be counted as FMLA. Since FMLA requires insurance coverage the disabled employee would receive health insurance during the 12 week FMLA eligibility period even though that is not an ADA requirement. FMLA requires reinstatement to the same or equivalent position.

If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employer to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

## **Workers' Compensation**

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

## **Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)**

An employer's obligation under FMLA ceases and a COBRA qualifying event may occur when and if;

- 1) the employment relationship would have terminated if the employee had not taken FMLA (i.e. his/her position eliminated due to Reduction in Force and no transfer is available),

- 2) an employee informs the employer of his or her intent not to return from leave (which may be before the leave starts), or
- 3) the employee fails to return from leave after exhausting his or her FMLA entitlement.

### **Employee Retirement Security Act (ERISA)**

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

### **POSTING REQUIREMENTS**

All state agencies and institutions are required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division of the Department of Labor. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. Agencies and institutions may duplicate the text of the notice contained in "YOUR RIGHTS FORM", or copies of the required notice may be obtained from local offices of the Wage and Hour Division (Telephone: 501-324-5292). For more information visit: <http://www.dol.gov/whd/fmla/>

## **6.6 Policy on Holidays Observed**

### **PURPOSE**

ADE generally recognizes the following holidays:

### **POLICY**

Benefit-eligible employees who work 20 hours or more per week are entitled to paid time off for the holidays listed below. The Secretary of State's office publishes an annual holiday schedule for the year.

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
Presidents Day / Daisy Gatson Bates Day	The third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4

Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
The day after Thanksgiving	*If it is proclaimed as a holiday by the Governor.
Christmas Eve Day	December 24
Christmas Day	December 25
Employee's Birthday	Employee's actual birthday

\*ADE recognizes the day after Thanksgiving as a holiday if it is proclaimed as a holiday by the Governor.

#### **REQUIRED WORK DURING A HOLIDAY**

The Secretary of Education or designee will notify employees whether ADE will remain open for a holiday during a legislative session.

If an employee is required to work on a holiday, he or she may take a substitute holiday at a time approved by the employee's supervisor.

#### **HOLIDAY DURING ANNUAL OR SICK LEAVE OR DAY OFF**

If a holiday occurs while an employee is on annual or sick leave, that day is considered a holiday and shall not be charged against the employee's annual or sick leave.

If a holiday occurs on an employee's regularly scheduled day off, the employee shall be given equivalent time off. Employees who work less than full time may take the holiday at a rate proportionately equal to their time worked. For example, if an employee works halftime, a holiday would be granted equivalent to four (4) hours.

#### **HOLIDAY PAY**

Regularly salaried and extra help employees are eligible to receive holiday pay if they are in pay status at least fifteen (15) minutes on their last scheduled workday before the holiday and at least fifteen (15) minutes on the first scheduled workday after the holiday.

A regular employee who works a part-time schedule of at least twenty (20) hours per week is entitled to holiday pay as follows:

1. If the holiday occurs on a day that the employee is normally scheduled to work, the employee shall be entitled to holiday leave for the hours normally worked that day; and
2. If the holiday occurs on a day that the employee is not normally scheduled to work, the employee shall be entitled to leave for part of the day in an amount in proportion to the percentage of the

employee's normal workweek to a full schedule.

## **GENERAL INFORMATION**

A holiday falling on a Saturday is normally observed on the preceding Friday. A holiday falling on a Sunday is normally observed on the following Monday.

Birthday leave accrual for a part-time employee is proportional to that of a comparable full-time employee. As used in this policy, "part-time employee" is a permanent employee whose regular workweek is at least twenty (20) hours. Birthday leave will only accrue if the employee is in pay status at least fifteen (15) minutes on their last scheduled workday before the birthday and at least fifteen (15) minutes on the first scheduled workday after the birthday

## **6.7 Inclement Weather**

### **PURPOSE**

This document establishes ADE's inclement weather policy, in compliance with the Office of Personnel Management (OPM) Policy #53 and the Governor's Policy Directive Seven. State government does not normally close its offices because of hazardous weather conditions. However, the obligation to provide services to the citizens of the state must be balanced with the risk of danger to state employees. It is, therefore, appropriate that guidelines which reflect the needs of our citizens' and employees' safety be established.

### **POLICY**

There are times when the severity of weather conditions causes state offices to be officially delayed, closed, or dismissed early. In these situations, non-essential personnel should look for official media notice to state agencies. In addition to the official media notices on local radio and/or television stations, employees may access the Arkansas State Government website ([www.arkansas.gov](http://www.arkansas.gov)) for the most up-to-date information regarding state office closings or call the Governor's inclement weather line at 501-682-2ICE (2423).

To sign up for inclement weather notices via email, go to;  
<http://www.arkansas.gov/notifications/index.php>. Local media will be used to notify employees of policy implementation by 6:30 a.m., if possible.

### **DEFINITIONS**

#### **Inclement Weather**

Weather events such as ice, sleet, hail, snow, flooding, tornado, hurricanes, earthquakes, or natural disasters.

#### **Reporting to Work**

ADE complies with the Governor's Policy Directive #7 (GPD #7), Inclement Weather Policy. Each unit supervisor is responsible for designating essential personnel within their office in accordance with Section 3 of GPD #7.

On days that the State's Inclement Weather policy is in effect and ADE is closed, only employees designated essential by their supervisors are required to report to work. The Commissioner or designee may adjust work schedules allowing time off for those employees who voluntarily or



involuntarily did report to work.

If the State's Inclement Weather policy is in effect but ADE is not closed, all employees are required to report to their workstations by 10:00 a.m. Employees who report to work by 10:00 a.m. will not be charged leave. Any employee reporting to their workstation after 10:00 a.m., must submit annual leave for the full time involved in their tardiness, beginning with the employee's official start time. For example, if an employee's work schedule is from 8:00 a.m. – 4:30 p.m., and the employee reported to work at 10:15 a.m., the employee must file a leave form for 2.25 hours of annual leave. Any employee that does not report to their workstation will be charged a full day (8 hours) of leave.

If a delayed opening is announced for 10:00 a.m., non-essential employees who work a flexible schedule of 7:00 a.m. to 3:30 p.m., would be expected to report to work no later than 9:00 a.m. if they wish to leave at their regularly scheduled time (3:30 p.m.). However, these employees may also choose to revert to an 8:00 a.m. to 4:30 p.m. schedule for the day when an inclement weather delay is announced. In the example above, an employee who normally works 7:00 a.m. to 3:30 p.m., may choose to arrive at 10:00 a.m., and adjust the departure time to 4:30 p.m.

If the State's Inclement Weather Policy is not in effect, each agency has been granted the discretion for early dismissal to ensure the safety of all state personnel. All ADE employees will be notified by email when ADE offices close. Any staff member who feels they need to leave earlier due to safety concerns is to consult with their supervisor and submit the proper leave through the EASE system.

If the State's Inclement Weather policy is not in effect and the employee is granted leave from his/her supervisor during a period of inclement weather, the employee may use earned annual, holiday, compensatory leave, or leave without pay.

Any ADE employee who is allowed to leave work PRIOR to the announced dismissal time, must submit annual leave for the full time they were not at work. For example, if an employee's work schedule is from 8:00 a.m. – 4:30 p.m., and the employee left work at 2:00 p.m., the employee must file an EASE leave form for 2.50 hours of annual leave, if the leave was requested prior to the early dismissal announcement. Employees who remain at work until the announced dismissal time will be credited for eight (8) hours or a full day of work.

In any case, non-exempt employees will submit leave for inclement weather in the EASE system if the policy was followed; they will be required to reflect INCL (Inclement Weather) in EASE leave for appropriate time and date of the inclement weather.

Exempt employees do not need to submit leave forms for inclement weather.

Telework:

In certain instances, the Governor may declare State office buildings closed except for critical operations, however, State employees who can telework should do so. Employees should contact their supervisor to determine if telework is possible.

No action is necessary for those employees who were not scheduled to be at work due to prior leave approval. Employees cannot get credit for an Inclement Weather Day if they previously scheduled leave for the same day. Employees who were not scheduled to be at work due to prior leave approval will be charged leave as previously approved by their supervisor.

For Work Areas Outside of Greater Little Rock:

For ADE employees whose official workstation is outside of the greater Little Rock area, the aforementioned Inclement Weather Policy will be followed.

If the co-op or school district, which is designated as the employee's official workstation, is closed on other days or times in addition to the dates and times designated by the Governor for the greater Little Rock areas, these employees will indicate INCL in EASE under leave. All such employees, exempt or non-exempt, are required to file in the EASE system, emailing supporting documentation to Time and Leave stating the co-op or school district was closed due to inclement weather. Each Assistant

Commissioner (AC) is responsible for approving the inclement weather leave submitted by these employees once the AC has determined that the official workstation for these employees in their division was indeed closed. If the co-op or school district designated as an official workstation for an ADE employee was not closed, the employee must take annual leave for hours not at work on these days.

## RELATED POLICIES

OPM #53 Inclement Weather

Governor's Policy Directive #7 (GPD #7)

Disclaimer: If any portion of this Policy is found to be in conflict with the Office of Personnel Management (OPM) policies, and/or state and federal laws or rules, the laws, rules and OPM policies will supersede any information /provisions of the Policy.

division was indeed closed. If the co-op or school district designated as an official workstation for an ADE employee was not closed the employee must take annual leave for hours not at work on these days.

## 6.8 Military Leave

ADE supports employees who may need to take a leave of absence to satisfy military obligations or call to active duty. This policy outlines legal requirements under USERRA (Uniform Services Employment and Reemployment Rights Act) and provides guidance for employees who may need to take a leave of absence.

<b>Types of Military Leave</b>	Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA), Ark. Code Ann. §§ 21-4-102, 21-4-203, and 21-4-212 provide several protections for employees who are on deployment for civilian work due to voluntary or involuntary uniformed service. It is ADE's policy to honor and comply with the provisions of those statutes. Uniformed Services are classified as the Armed Forces (Army, Navy, Marine Corp, Air Force, or Coast Guard), the Army National Guard, the Air National Guard, full-time National Guard duty, the Commissioned Corp of the Public Health Service, and any other category of persons designated by the President of the United States, in time of war, or national emergency. Service refers to the performance of such military duty on a commission or non-commission status, and on a voluntary or involuntary basis, in the uniformed services, including; active duty, active duty for training, active duty for special work, weekend or weekday drill, funeral honors, fitness for duty, or other required examination.
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	<p>There are 5 types of military leave available to state employees:</p> <ol style="list-style-type: none"> <li>1. Called to regular active duty;</li> <li>1. Annual training, including drill;</li> <li>1. Called to duty in emergency situations;</li> <li>1. Called to duty for specialized training; and</li> <li>1. Treatment for a service-connected disability</li> </ol>

<b>Regular Active Duty</b>	<p>A regular, full-time employee who is drafted or called to active duty in the Armed Forces of the United States or who volunteers for military service, shall be placed on extended military leave without pay.</p> <p>All unused sick leave at the time of military leave will be reinstated at the time the employee returns. All accrued, unused annual leave at the time of military leave will be reinstated at the time the employee returns to state employment unless the employee requested and received a lump-sum payment for the accrued, unused annual leave when placed on the extended military leave.</p> <p>Employees performing active military service for fewer than 31 days must report for reemployment on the first regularly scheduled workday within 8 hours after discharge from military service. Those serving more than 30 days, but less than 181 days must report within 14 days after discharge. Those serving more than 180 days must report for reemployment within 90 days after discharge from military service.</p> <p>The employee will be reinstated to the position vacated or an equivalent position for which he or she is qualified in ADE or its successor in interest. The employee shall not lose any seniority rights or any of the other benefits and privileges of employment.</p> <p>Former employees returning to ADE after military service, but who extended their enlistment or re-enlisted for additional military service beyond the initial period more than a period of 4 years will lose all re-instatement rights and will be considered a rehire. Military service time may be extended beyond the 5-year period for reasons stated in 38 United States Code §4312(c).</p>
<b>Annual Training</b>	<p>Employees participating in military training programs made available by National Guard or any of the reserve branches or the U.S. Public Health Service training program shall be entitled to a leave of absence for a period of 15 days plus</p>

	<p>necessary travel time for annual training requirements, including drill requirements, or other duties performed in an official duty status in any one calendar year. To the extent this leave is not used in a calendar year, it will accumulate for use in the succeeding calendar year until it totals 15 days at the beginning of the calendar year. An employee who requests military leave shall furnish a copy of his or her orders for their personnel file.</p> <p>Whenever an employee of a political subdivision is granted military leave for a period of 15 days per calendar or fiscal year, the military leave will accumulate for use in succeeding calendar or fiscal years until it totals 15 days at the beginning of the calendar or fiscal year, for a maximum number of military leave days available in any one calendar year or fiscal year to be 30 days.</p> <p>The period of military service shall, for purposes of computations to determine whether such person may be entitled to retirement benefits, be deemed continuous service and the employee shall not be required to make contributions to any retirement fund. ADE shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained.</p> <p>When an employee is granted a leave of absence under this policy, he or she shall be entitled their regular salary during the time he or she is away from their duties during such leave of absence. This leave of absence shall be in addition to the regular annual leave accrued by the employee. During a leave of absence, the employee shall be entitled to preserve all seniority rights, efficiency or performance ratings, promotional status, retirement privileges, life and disability insurance benefits, and any other rights, privileges, and benefits to which they have become entitled.</p>
<p><b>Emergency Situation</b></p>	<p>Regular, full-time ADE employees who are called to active duty in emergency situations (and in situations covered by 10 United States Code §12304) as declared by the Governor or President shall be granted leave with pay not to exceed 30 working days. Periods beyond the 30-day limit may be charged as annual leave at the employee's option and, if necessary, as leave without pay.</p> <p>Emergency situations means any case of invasion, disaster, insurrection, riot, breach of peace, or imminent danger; threats to the public health or security; or threats to the maintenance of law and order.</p> <p>The reinstated employee will not lose any seniority rights with respect to leave accrual rates, salary increases, Reduction in Force policies, or other benefits and privileges of employment. The period of military service, for purposes of computations to determine whether such persons may be</p>

	<p>entitled to retirement benefits, should be deemed continuous service and the employee shall not be required to make any contributions to any state supported retirement fund. To receive service credit for retirement purposes, a copy of the employee's DD214 must be submitted to the appropriate retirement system. The retirement system will notify the ADE to remit the employer's contributions to update the employee's account.</p> <p>To be eligible for emergency active military duty paid leave, the employee must be actively employed by the state and submit a copy of military orders for each emergency deployment. Military leave for emergency active-duty situations is granted in addition to annual military leave for training purposes and annual leave.</p>
<b>Specialized Training</b>	<p>An employee who volunteers or is ordered to duty for the purpose of special training is placed on leave without pay for the period of training unless the employee elects to use accrued annual leave. This training is considered sporadic and separate from the required annual training. This leave without pay is given in addition to the paid leave for annual military training.</p> <p>The employee retains eligibility rights including accumulated annual leave (unless the above option has been exercised) and any sick leave not used at the time the employee begins the training. The employee does not accumulate annual or sick leave during a leave without pay period, and the annual leave accrual rate will be calculated as though there had been no period of absence.</p>
<b>Service-Connected Disability</b>	<p>ADE employees who have been rated by the United States Department of Veterans Affairs or its predecessor to have incurred a military service-connected disability and have been scheduled to be reexamined or treated for the disability shall be entitled to a leave of absence with pay. The employee shall be entitled to his or her regular salary during the time the employee is away from his or her duties during the leave of absence. The leave with pay may not exceed 6 days for the purpose specified in this law during any one calendar year. The leave of absence shall be in addition to the regular annual leave and sick leave allowed to the employee.</p> <p>During the leave of absence allowed under this law, the employee shall be entitled to preserve:</p> <ol style="list-style-type: none"> <li>1. All seniority rights, efficiency or performance ratings, promotional status, retirement privileges, and life and disability insurance benefits; and</li> <li>1. Any other rights, privileges, and benefits to which he/she has become entitled.</li> </ol> <p>For computation purposes to determine whether the employee may be entitled to retirement benefits, the period of</p>

	<p>the leave of absence shall be deemed continuous service. ADE shall continue to contribute its portion of any life or disability insurance premiums during the leave of absences on behalf of the employee, if requested, so that continuous coverage may be maintained.</p>
<p><b>Military Leave and Vacancy Compensation</b></p>	<p>Any person appointed to fill the office or perform the duties of an employee on a military leave of absence who dies, resigns, or in any manner or for any cause vacates the office or position to which he or she was appointed, the Governor, or person whose duty it would be to fill the office or position if a vacancy should occur, shall select and appoint a capable and competent person to perform the duties of the office or position until the term of office or employment expires or until the official or employee appears for the purpose of resuming the office or position.</p> <p>The appointment shall expire upon the expiration of the term of the office or employment of the employee for the purpose of the resumption of his or her duties. The deputies or other persons appointed to fill the office or position of the official or employee during a leave of absence under the provisions of this subchapter shall receive the same compensation and shall be paid in the same manner as the official or employee whose duties he or she assumes.</p> <p>During the time any official or employee is absent from his or her office or position on a leave of absence granted under the provisions of this subchapter, he or she shall not be entitled to compensation.</p>

## 6.9 Leave of Absence Without Pay (LWOP)

The Secretary of Education may grant continuous leave of absence without pay (LWOP). Any such period shall not exceed six continuous months. Each request for LWOP is to be considered on a case-by-case basis. At the expiration of a six-month period of LWOP, additional extensions may be requested by the employee if updated justification with appropriate documentation, as provided to the Secretary of Education.

You must use all of your accumulated annual leave before you take LWOP, except when the leave qualifies as maternity leave, certain types of military leave, when the leave is for disciplinary purposes, or for absences due to inclement weather. You will not earn annual leave or sick leave if you are on LWOP for 10 or more days during a calendar month. You will not be paid for official holidays while you are on LWOP.

Approval or disapproval of requests for LWOP as an accommodation should be determined based upon impact on ADE's operation and mission and whether approval would create an undue hardship on ADE.

When on LWOP, employees may continue to participate in ADE's group insurance programs during the period of LWOP. Employees who choose this option must pay the total cost (your part and ADE's matching part) of your coverage for any month when you are on LWOP for 10 or more consecutive

days. For those benefits provided by ADE, with no employee contribution (basic life insurance and long-term disability insurance), you must pay the amount of the ADE's contribution or risk loss of coverage, except when those benefits are protected by FMLA regulations (see Family and Medical Leave).

*If any employee fails to report to work promptly at the end of an agreed-upon period of LWOP, your employment with ADE may be terminated. If there is a credible reason for the delay, ADE may extend your period of approved leave. The extension must be approved by the Secretary of Education if it causes your total leave to exceed six months.*

"Undue hardship" is defined as "an action requiring significant difficulty or expense" when considered in relationship to several factors. These factors may include, but are not limited to, the nature of the position occupied by the employee and the cost of the request in relation to the size, resources, nature, and structure of ADE's operation and mission. Whether or not an accommodation request would create an undue hardship focuses on the resources and circumstances of ADE in relationship to the cost or difficulty of providing a specific leave request. Undue hardship refers not only to financial difficulty, but also to requests that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature of operation of ADE.

Notification may be necessary prior to the start of the workday to obtain the approval of the Secretary of Education/designee to authorize LWOP;

- Employees may not take LWOP as authorized by Ark. Code Ann. § 21-4-210 until all their compensatory, annual and holiday leave (and sick leave in cases of illness) has been exhausted, except in the cases of maternity leave, inclement weather as designated by state policy, budget reductions, and ADE disciplinary actions.
- In the case of maternity leave, such employees may elect to take LWOP, without exhausting accumulated sick leave and annual leave.
- In the case of disciplinary actions, ADE may place an employee in disciplinary LWOP pay status in accordance with the ADE Employee Conduct Standards.
- Requests for LWOP should be made to and must be approved by the Secretary of Education/designee as authorized by Ark. Code Ann. § 21-4-210. Each request for LWOP is to be considered on a case-by-case basis. Upon expiration of any six (6) month period of LWOP, additional extensions may be requested by the employee if updated justification with appropriate documentation is provided to the Secretary of Education/designee.

LWOP may be granted for the following reasons:

- An extended absence, requested by the employee, which is in the best interest of ADE or which ADE can accommodate. ADE employees may be granted up to six months of LWOP. A written request to the Secretary of Education is required for approval of an LWOP. A written request for approval of LWOP is required if the leave request is for any reason except for the following:
- Necessary absences due to the employee's or their immediate family member's serious health condition (see Family and Medical Leave) or because of disability or personal reasons when the absence extends beyond available earned vacation, compensatory and sick leave. On a case-by-case basis, unpaid leave will be considered as a form of reasonable accommodation for qualified individuals with disabilities.
- Leave for the birth or placement of a child for adoption or foster care (see Family and Medical Leave).
- Military leave that involves active duty or active duty for specialized training (see Military Leave).
- Employees may be put on LWOP for disciplinary reasons.
- Employees who do not report to work because of inclement weather conditions may elect to use "LWOP" in lieu of "annual leave" with approval from their supervisor. Absences due to inclement

weather will be treated as an “excused absence.”

An employee will be reinstated with full rights at the end of the period of LWOP. An employee who is on LWOP and returns within the required six months continues to earn credited service toward the next rate in the leave accrual schedule just as the employee who had never gone on LWOP. A returning employee’s leave accrual rate will not be affected by periods of LWOP, nor will the time of entitlement to a change in leave accrual rate be adjusted because of LWOP. If the position the employee left is no longer available due to a budgetary reduction in staff, the employee will have no options and cannot be reinstated.

The Human Resources Director/designee will provide administrative oversight and will recommend disciplinary action in situations involving abuse of LWOP. Employees who abuse LWOP may be subject to disciplinary action, up to and including termination.

## 6.10 Leave for Bone Marrow or Organ Donation Leave

All state employees are entitled to leave with pay for up to 30 days per calendar year in order to serve as a human organ donor. In addition, all state employees are entitled to leave with pay for up to seven days per calendar year to serve as a bone marrow donor.

**Bone marrow donor:** a person from whose body bone marrow is taken to be transferred to the body of another person.

**Organ:** a human organ that is capable of being transferred from the body of a person to the body of another person, including eyes.

**Organ donor:** a person from whose body an organ is taken to be transferred to the body of another person.

**State agency:** ADE, bureau, board, or commission of any branch of state government and all state-supported institutions of higher education.

**State employee:** a full-time employee of the State of Arkansas or any branch, department, board, bureau, commission, or state-supported institution of higher education.

In order to qualify for organ donor or bone marrow donor leave, employees must request the leave in writing and provide the agency written verification by the physician performing the transplant that the employee will serve as a human organ or bone marrow donor. Following the transplantation, the employee shall provide the agency written verification by the same physician that the employee did serve as a human organ or bone marrow donor.

A state employee may use this leave without loss or reduction in pay, leave, or credit for time of service.

## 6.11 Child Educational Activities Leave (CEAL)

All state employees shall be entitled to 8 total hours of leave, regardless of the number of children, during any one calendar year for the purpose of engaging in and traveling to and from the educational activities or interscholastic activities of a child.

**Child:** a person enrolled in pre-kindergarten through grade 12 who is of the following relation to a state employee:

1. Natural child;
2. Adopted child;
3. Stepchild;
4. Foster child;
5. Grandchild;



6. Ward of the state employee by virtue of the state employee's having been appointed the person's legal guardian or custodian; or
7. Any other legal capacity where the state employee is acting as a parent for the child.

A Child includes a person who meets the criteria above of this section but is:

1. Over 18 years of age; and
2. Declared legally incompetent

**Developmental Disability:** A disability of a person that:

1. Is attributable to mental retardation, cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism; is attributable to any other condition of a person found to be closely related to mental retardation because the condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation or requires treatment and services similar to that required for a person with mental retardation; or is attributable to dyslexia resulting from a disability;
2. Originates before the person attains the age of 22 years;
3. Has continued or can be expected to continue indefinitely; and
4. Constitutes a substantial handicap to the person's ability to function without appropriate support services, including, but not limited to, planned recreational activities, medical services such as physical therapy and speech therapy, and possibilities for sheltered employment or job training.

**Educational Activity:** Any school-sponsored activity including without limitations:

1. Attending a parent-teacher conference;
2. Participating in school-sponsored tutoring of the child;
3. Participating in a volunteer program sponsored by the school in which the child is enrolled;
4. Attending a field trip with the child;
5. Attending a school-sponsored program or ceremony in which the child is participating;
6. Attending a graduation or homecoming ceremony in which the child is participating;
7. Attending an awards or scholarship presentation in which the child is participating;
8. Attending a parents' or grandparents' breakfast in which the child is participating;
9. Attending a classroom party in which the child is participating;
10. Attending a school committee meeting of the school in which the child is enrolled;
11. Attending an academic competition in which the child is participating;
12. Attending an athletic, music, or theater program in which the child is enrolled; and
13. Engaging in any of the activities listed above that are connected with a prekindergarten program.

**Home-schooled student:** A student legally enrolled in an Arkansas home school.

**Interscholastic activity:** An activity between schools subject to regulations of the Arkansas Activities Association that is outside the regular curriculum of a school district, including without limitation an athletic activity, a fine arts program, or a special interest club or group; and taught by an individual with a minimum of a high school diploma.

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

**Resident school:** The school to which the student would be assigned by the resident school district in which the home-schooled student's parent resides.

**State Agency:** ADE, bureau, board or commission of any branch of state government and all state-supported institutions of higher education,

**State Employee:** A full-time employee of the State of Arkansas or any branch, department, board, bureau, commission, or state-supported institution of higher education.

A home-schooled student shall not participate in interscholastic activities at a public school other than

the student's resident school.

Leave that is unused may not be carried over to the next year and is not compensable to the state employee at the time of retirement.

Revised 11/2/2017

## 6.12 Maternity Leave

Maternity leave is treated as any other leave for sickness or disability; however, the employee may elect to take unpaid leave of absence without pay without exhausting accumulated annual and sick leave.

An employee may request catastrophic leave to receive paid maternity leave.

If an employee is eligible for both catastrophic leave for maternity purposes and family medical leave for maternity purposes, the two shall run concurrently.

## 6.14 Sick Leave

Sick leave is a benefit available to ADE employees who work in benefits-eligible positions. This policy describes how paid sick time is accrued and how it may be used.

ADE recognizes that an employee's illness or injury or the illness or injury of a family member may necessitate an employee's absence from work. Employees who will be out sick must contact their designated supervisor at least one hour prior to the reporting time whenever possible.

<b>Sick Leave Accrual</b>	<p>Employees accrue sick leave at the rate of 1 day (8 hours) for each completed month of service, 4 hours for part-time employees. The maximum sick leave accumulation on December 31 of each year is 960 hours (120 days). Accrued leave may exceed 960 hours during the calendar year, but any accrued, unused leave in excess of 960 hours will be forfeited at the end of the calendar year on December 31. Employees who have a balance of over 960 hours at the end of the calendar year may donate their excess time to the catastrophic leave bank.</p> <p>Sick leave accrued during a pay period is not considered to be earned by an active employee until the last working day of the month, and the leave must be earned before it can be used. Although accrual for the pay period is entered into the system when payroll is run, sick leave accrued is not available for use until the first day of the following month. Employees are not allowed to borrow from anticipated future accruals.</p> <p>Sick leave is approved based on workdays, not calendar days. Non-work days, such as</p>
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	<p>holidays and weekends, are not charged as sick leave. The minimum sick leave amount an employee can use is 15 minutes. Absences due to sick leave, except in the case of maternity leave, shall be charged in the following order: (1) earned sick leave; (2) earned annual leave; (3) catastrophic leave; and (4) leave without pay. If an employee does not qualify for catastrophic leave, the employee may request leave without pay.</p> <p>Sick leave may not be accumulated during leave without pay (LWOP), when such leave totals ten or more days or eighty hours within a calendar month.</p>
<p><b>Requesting and Reporting Sick Leave Used</b></p>	<p>An employee shall be required to furnish to his or her supervisor a certificate from an attending health care provider for five or more consecutive days of sick leave and may be required to furnish a certification for purposes of the Family and Medical Leave Act (FMLA) for a serious health condition that continues for three or more consecutive days. An employee may also be required to provide a medical certification for other absences under a division or unit attendance policy reviewed by the Human Resources Office. A certificate from a Christian Science practitioner listed in the Christian Science Journal may be submitted in lieu of a physician's certificate.</p> <p>Requests for sick leave shall be submitted in advance, unless the circumstances make this impracticable. In that event, a request for sick leave must be submitted within two days after the employee returns to work. Whenever possible, the employee should schedule planned medical, dental and optical appointments in a manner that minimizes disruption of office workflow.</p> <p>Unlike Annual leave, Sick leave may only be used when the employee is unable to work because of sickness, injury or for medical, dental, optical treatment. Sick leave may also be granted to employees due to the death or serious illness of a member of the employee's immediate family (see definition of immediate family members).</p> <p>The Time and Leave Administrator charges absences due to illness or injury in the following order except when used in connection with Maternity Leave, see</p>

	<p>Maternity Leave Policy.</p> <ol style="list-style-type: none"> <li>1. Earned Sick Leave</li> <li>2. Earned Annual Leave</li> <li>3. Catastrophic Leave</li> </ol> <p>An employee should submit a request to their supervisor in advance in the Empowering Arkansas State employees <a href="#">EASE</a> system.</p>																		
<b>Definition of Immediate Members</b>	<table border="1"> <tr> <td colspan="2"><b>Sick and Funeral Leave</b></td> </tr> <tr> <td colspan="2"><b>Definition of Immediate Family</b></td> </tr> <tr> <td>Father</td><td>Mother</td></tr> <tr> <td>Husband</td><td>Wife</td></tr> <tr> <td>Child</td><td>Sister</td></tr> <tr> <td>Brother</td><td>Grandchild</td></tr> <tr> <td>Grandparents</td><td>In-laws</td></tr> <tr> <td colspan="2">Any individual acting as a parent or guardian of</td></tr> <tr> <td colspan="2">The definition of family member covers a wide range of relationships as listed below:</td></tr> </table>	<b>Sick and Funeral Leave</b>		<b>Definition of Immediate Family</b>		Father	Mother	Husband	Wife	Child	Sister	Brother	Grandchild	Grandparents	In-laws	Any individual acting as a parent or guardian of		The definition of family member covers a wide range of relationships as listed below:	
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Any individual acting as a parent or guardian of																			
The definition of family member covers a wide range of relationships as listed below:																			
<b>Doctor Restrictions</b>	<p>If the ADE employee is recuperating from an injury, an illness or surgery and the doctor approves their return to work but places restrictions on what they can do, ADE will make every effort to accommodate the restrictions. A statement will need to be provided from the ADE employee's doctor releasing him/her to full duty or identifying their restrictions. The supervisor will review the restrictions to determine whether the employee can successfully carry out the job responsibilities within the limitations they impose. The employee's physician may be contacted to obtain further information about the restrictions.</p>																		
<b>Worker's Compensation with Sick Leave</b>	<p>If the absence from work is due to a temporary occupational illness or injury, and the employee is entitled to workers' compensation benefits, the employee may use sick leave to</p>																		

	<p>supplement the workers' compensation. The employee's weekly pay from both sources may be equal to (but does not exceed) their normal pay at the time of the injury or onset of the illness. The accrued sick leave will be reduced by the amount used to supplement workers' compensation.</p>
<p><b>Transfer of Sick Leave from One State Agency to Another State Agency or Institutions of Higher Education and Payout</b></p>	<p>Employees transferring without a break in service between state agencies that are covered by this policy will retain all accumulated sick leave.</p> <p>If an employee is terminated due to a reduction in force, the employee will have all accrued sick leave restored if the employee returns to state employment within six (6) months of termination.</p> <p>Employees are not entitled to payment for earned but unused sick leave when they terminate their employment. However, an employee who returns to state employment within 30 consecutive working days is considered a transfer, and sick leave that was earned but unused before separation from employment will be reinstated.</p> <p>If an ADE employee receives pay for unused sick leave at retirement and return to state employment, they are not required to wait the number of days for which they received the sick leave pay, nor are they required to repay the sick leave compensation.</p> <p>Employees are not entitled to payment for accrued and unused sick leave when they terminate their employment; however, they may be eligible for a payment when they retire, or if they die, the leave will go to their designated beneficiary. No payment is made until it has been determined that the deceased employee was not indebted to the state.</p> <p>Please refer to the <a href="#">Leave Transfer and Leave Payout Policy #54</a>.</p>

State employees who work in a regular salary position accrue paid sick leave at the rate of 1 day (8 hours) for each completed month of service. Sick leave with pay is allowed to permanent, probationary, provisional, and temporary employees who are working 1/2 time or more on a pro basis for each complete month of service.

Sick leave can only be used for the following purposes:

1. When the employee is unable to work because of sickness, injury or for medical, dental or optical treatment, but not including slight illnesses.
2. Death or serious illness of employee's immediate family member. Immediate family is defined as the father, mother, sister, brother, spouse, child, grandparents, grandchild, in-laws or any individual acting as a parent or guardian of an individual.

Sick leave accrued during a calendar month is not considered to be earned by an active employee until the last working day of the month, and the leave must be earned before it can be used. For accrual purposes only, employees will accrue half their monthly accrual of sick leave if employed on the first working day of the month and are in active status on the payroll through the 15th of that month. Employees will accrue half their monthly accrual if employed on the 16th of the month and are in active status on the payroll through the last working day of that month. (If the 16th falls on a weekend or holiday, accrual begins on the first working day thereafter.) Employees are prohibited from borrowing from anticipated future accruals.

Sick leave is approved on the basis of work days, not calendar days. Non-work days, such as holidays and weekends, are not charged as sick leave. The minimum sick leave amount an employee can use is 15 minutes. Absences due to sick leave, except in the case of maternity leave, shall be charged in the following order:

1. earned sick leave;
2. earned annual leave;
3. catastrophic leave; and
4. leave without pay. If an employee does not qualify for catastrophic leave, the employee may request leave without pay.

Employees who are on sick leave for 5 or more consecutive days must furnish a certificate of illness from an attending physician. ADE has a written procedure to identify patterns of sick leave usage and may require an employee to furnish a certificate from an attending physician for any use of sick leave. A certificate from a Christian Science practitioner listed in the Christian Science Journal may be submitted in lieu of a physician's certificate.

Employees continue to earn sick leave at the normal accrual rate when they are on sick leave, but an employee may not earn sick leave when in a leave without pay status for 10 or more cumulative days within a calendar month.

No employee can carry over to the next calendar year more than 120 days, or 960 hours, of accumulated sick leave. Accrued leave may exceed 120 days during the calendar year, but days in excess of 120 days hours will be forfeited if not used by December 31st of each year. Employees who have a balance of over 120 days at the end of the calendar year may donate any time over 120 days to the OPM Catastrophic Leave Bank Program.

### **Leave Transfer and Payout**

Employees transferring between state agencies are allowed to transfer their leave benefits when they move to another state agency.

Employees transferring without a break in service between state agencies that are covered by this policy will retain all accumulated sick leave.

Employees transferring without a break in service, between state agencies and/or state-supported institutions of higher education, which are covered by the Uniform Attendance and Leave Act, retain all accumulated annual leave upon transfer to their new agency or institution of higher education.

If an employee separates from ADE and is paid for their annual leave upon separation, the employee is not allowed to return to state employment until he or she has exhausted the number of days for which they were paid annual leave. If the employee has been separated from state government for 30

working days or less, they have the option of purchasing their unexpired leave balance from the hiring state entity.

If an employee receives compensation for unused sick leave at retirement and returns to state employment, the employee is not required to wait until the expiration of the number of days for which he or she received additional compensation before returning to state employment or to repay the amount of the compensation.

When an employee is laid off because of budgetary reasons or curtailment of activities and he or she is reinstated within a period of 6 months, accumulated sick leave may be restored to his or her credit.

When an officer or employee of a state office or agency excluded from the provisions of the Uniform Attendance and Leave Act leaves employment of the excluded office or agency and becomes employed by an agency or institution which is subject to the Uniform Attendance and Leave Act, the period of employment with the excluded office or agency shall be included as state employee service for the purpose of determining the rate at which the employee earns paid annual leave.

Upon return to state employment, the hiring agency should request a Proof of Prior Service from each agency or institution of higher education where the employee has previously worked. The employee's rate of annual leave accrual is determined by considering all past state employment.

## **Leave Payout**

When an employee separates employment from a state agency (whether by termination, resignation, death, retirement, or another way), the accrued, unused leave to his or her credit may be paid out as a lump sum according to the following:

### **1. Termination/Resignation**

#### **Annual leave**

For a regular state employee, a maximum of 30 working days or 240 hours, including holidays and birthdays, is paid out. For a fire and emergency service employee of the State Military Department, a maximum of 45 working days or 360 hours, including holidays and birthdays.

#### **Sick leave**

No sick leave is paid out.

### **2. Death**

A voucher is prepared and payable to either the deceased's estate. No payment is made until it has been determined that the deceased employee was not indebted to the state.

#### **Annual leave**

A maximum of 480 hours or 60 working days, including holidays and birthdays.

#### **Sick leave**

An employee or beneficiary cannot receive an amount that exceeds \$7,500. The amount of sick leave paid out is calculated as follows:

1. If the employee has accumulated at least 50 days but fewer than 60 days of sick leave, the employee shall receive an amount equal to 50% of the number of accrued sick leave days rounded to the nearest day multiplied by 50% of the employee's daily salary;
2. If the employee has accumulated at least 60 days but fewer than 70 days of sick leave, the employee shall receive an amount equal to 60% of the number of accrued sick leave days rounded to the nearest day multiplied by 60% of the employee's daily salary;

3. If the employee has accumulated at least 70 days but fewer than 80 days of sick leave, the employee shall receive an amount equal to 70% of the number of accrued sick days rounded to the nearest day multiplied by 70% of the employee's daily salary; and
4. If the employee has accumulated at least 80 or more days of sick leave, the employee shall receive an amount equal to 80% of the number of accrued sick leave days rounded to the nearest day multiplied by 80% of the employee's daily salary.

The daily salary is determined by dividing the annual salary by 260.

Paid sick leave taken under the Family and Medical Leave Act of 1993 will be added to the employee's final sick leave balance for the purpose of qualifying for the incentive payout; however, the amount paid out is based on the unused sick leave balance at the time of death.

### **3. Retirement**

#### **Annual leave**

For a regular state employee, a maximum of 240 hours or 30 working days, including holidays and birthdays. For a fire and emergency service employee of the State Military Department, a maximum of 360 hours or 45 working days, including holidays and birthdays.

#### **Sick leave**

An employee or beneficiary cannot receive an amount that exceeds \$7,500. The amount of sick leave paid out is calculated as follows:

1. If the employee has accumulated at least 50 days but fewer than 60 days of sick leave, the employee shall receive an amount equal to 50% of the number of accrued sick leave days rounded to the nearest day multiplied by 50% of the employee's daily salary;
2. If the employee has accumulated at least 60 days but fewer than 70 days of sick leave, the employee shall receive an amount equal to 60% of the number of accrued sick leave days rounded to the nearest day multiplied by 60% of the employee's daily salary;
3. If the employee has accumulated at least 70 days but fewer than 80 days of sick leave, the employee shall receive an amount equal to 70% of the number of accrued sick days rounded to the nearest day multiplied by 70% of the employee's daily salary; and
4. If the employee has accumulated at least 80 or more days of sick leave, the employee shall receive an amount equal to 80% of the number of accrued sick leave days rounded to the nearest day multiplied by 80% of the employee's daily salary.

The daily salary is determined by dividing the annual salary by 260.

Paid sick leave taken under the Family and Medical Leave Act of 1993 will be added to the employee's final sick leave balance for the purpose of qualifying for the incentive payout; however, the amount paid out is based on the unused sick leave balance at the time of retirement.

#### **Employees who do not accrue sick leave**

1. Emergency, intermittent, extra help, and per diem employees;
2. The elected constitutional officers of the state and their employees;
3. The General Assembly and its employees, including employees of the Bureau of Legislative Research of the Arkansas Legislative Council and the Division of Legislative Audit;
4. Members of the Arkansas Supreme Court, Circuit and Chancery Courts, Prosecuting Attorneys and the Administrative Offices of the Courts;
5. Arkansas Highway and Transportation Department; and



6. All administrative, academic, or other non-classified employees of state supported institutions of higher education.

### **Reporting Unexpected Sick Leave**

Employees who are unable to report to work due to illness or injury must notify their immediate supervisor or designee before the scheduled start of their workday, if possible, or as soon as possible after the start of their workday. If the absence extends beyond the period initially reported, additional notification is required to comply with this section.

If an employee fails to make proper notification for use of sick leave as provided herein, such absence can be charged to annual leave or leave without pay. The employee may also be subject to disciplinary action.

Such determination shall be made at the Commissioner /designee's discretion.

## **SECTION VII – COMPENSATION**

### **7.1 Pay Periods**

Employees of ADE are paid biweekly on Fridays. The annual compensation to be paid to employees shall be payable in equal biweekly installments over the calendar year.

Employees hired on or after August 12, 2005 are required to have direct deposit. The salary received on the first pay period is determined by the employee's grade level and when the employee began work in the pay period. Pay periods begin on Sunday and end on Saturday. Employees are paid on Friday of the week following the close of the pay period.

An employee should review his or her remuneration statements (check stubs) for errors. Remuneration statements can be accessed by the employee through Powering Arkansas State Employees ([EASE](#)) website. Upon discovery of an error in the amount of pay, the employee should promptly bring the discrepancy to the attention of the payroll officer in the finance office. When underpayments are identified, they will be corrected in the next regular paycheck or as soon as possible. Overpayments will also be corrected in the next regular paycheck unless this presents a burden to the employee, in which case ADE and the employee will execute a repayment schedule.

### **7.1A Direct Deposit**

#### **PURPOSE**

This Direct Deposit Policy promotes safe, confidential, convenient, and fast payments to ADE employees.

#### **POLICY STATEMENT**

Any person hired or appointed to a position at ADE is required to accept payment of salary and wages by direct deposit. Employees must designate in writing the financial institution and account number to which their direct deposit will be transferred. The form used for authorizing this transfer is the "Bank Details/Direct Deposit Form".

#### **PROCEDURE**

As a condition of employment, ADE employees shall be required to enroll in direct deposit immediately upon hire or rehire. The direct deposit is the electronic deposit of funds into a financial institution as a form of payment. It is safe, confidential and convenient.

To request a change of an employee's direct deposit, a "Bank Detail/Direct Deposit Form" must be completed with accurate bank detail information (bank name, account number, routing number) and a document to verify bank information, submitted to the Human Resources Office or designee. Employees should contact [HumanResources@ade.arkansas.gov](mailto:HumanResources@ade.arkansas.gov) or your Human Resources office to request a form.

If an employee can demonstrate a hardship resulting in the inability to use direct deposit, they must submit a Direct Deposit Hardship Exemption Request Form to OPM. The Chief Fiscal Officer of the State has the authority to grant exemptions due to a hardship or upon any other reasonable basis.

Employees must immediately notify the Human Resources Office or ADE Payroll Office when there is any change to their banking information that affects their direct deposit.

Employees should never close an account until they know the banking information has been changed in the payroll system. Banking institutions will reject funds designated to closed accounts and the funds will be returned to the State of Arkansas.

Employees who have questions or need assistance with these guidelines may contact the Human Resources Office (or designee).

## **7.2 Payroll Deductions**

Deductions will be made from every employee's compensation as required by law. ADE also offers benefits beyond those required by law and eligible employees may voluntarily authorize deductions from their paychecks to cover the costs of participation in these programs.

## **7.3 Cost of Living Adjustments (COLA)**

The Arkansas General Assembly may, from time to time, authorize pay increases that represent a COLA for all current employees excluding extra help. These increases are not performance- based.

## **7.4 Establishing an Employee's Salary**

The rate of pay a state employee is eligible to receive depends on the employee's status with the state agency. Employees will fall into one of five categories:

1. new hire
2. rehired with the same or different state agency
3. transferring positions between pay tables,
4. promoting within the same pay table
5. demoting within the same pay table.

Employees must be compensated on the basis of the below criteria without regard to the employees' race, color, religion, gender, age, national origin, disability, or political affiliation.

The Office of Personnel Management (OPM) will accept an employee's prior state service with ADE, board, commission, bureau, and institution of higher education.

A state agency must provide a Proof of Prior Service form to a requesting agency to prove an employee's current and/or previous state employment, including salary eligibility, service credit, leave balances, and retirement system information.

### **New Hire Employees**

A person who has never been employed by any state agency, board, or constitutional office. Generally, a new hire employee will be paid at the entry pay level for the grade assigned to the classification unless a special rate of pay above the entry pay level is approved by the agency commissioner, OPM and/or Legislative Council. See the Special Rates of Pay policy for more information.

## **7.4 Rehired Employees**

An employee who has been separated from state employment for more than 30 working days from state service and returns to state service is eligible, not entitled, to receive the employee's last rate of pay not to exceed the maximum pay level.

If the employee's last rate of pay falls below the entry pay level of the new position, the employee's salary will be adjusted to the entry pay level.

### **Transferring Employees**

A transfer is the change in the duty assignment of an employee from one agency to another agency in the same classification or between pay tables.

An employee transferring positions from one pay table to another pay table, either within the same agency or a different agency, may receive a change in pay if one of the following occurs:

1. The employee's salary falls below the entry pay level of the new grade then the employee's salary will be adjusted to the entry pay level; or
2. A special rate of pay has been established.

The rate of pay must not exceed the maximum unless otherwise authorized by the agency commissioner.

When an employee transfers to another agency, the originating agency must pay the employee for all accumulated compensatory time and overtime accrued at the time of transfer. See the Overtime and Compensatory Time policy for more information.

### **Promotion**

A promotion is a change from one position to another position with a higher pay level on the same pay table. Generally, an employee who is promoted receives up to a 10% percent salary increase or, if the current salary falls below the entry pay level, the salary is adjusted to the entry pay level. An employee's rate of pay after promoting cannot exceed the maximum pay level of the grade.

### **Demotion**

A change in duty assignment of an employee from a position in one classification to a position in another classification of a lower pay grade within the same pay table. Employees demoting to a lower grade in the same pay table will receive a decrease in salary up to 10% percent. An employee's rate of pay after demoting cannot exceed the maximum pay level of the grade, and if the employee's rate of pay falls below the entry pay level after demoting, the salary will be adjusted to the entry pay level of the grade.

An employee may return to a position the employee formerly occupied within a 12 month period after promoting and will be eligible for a rate of pay no greater than what the employee would have been eligible had the employee remained in the lower-graded position.

## **SECTION VIII - WORKING CONDITIONS AND HOURS**

### **8.1 Smoking Policy**

Smoking is prohibited in ADE buildings, vehicles and within 25 feet of all building entrances. This policy applies equally to all employees and visitors. (See GPD #5 and #15)

### **8.2 Maintenance of Facilities**

Reports and requests regarding the condition of the building or employee's office area should first be directed to the supervisor or manager, Division Assistant Commissioner and then to the Assistant Commissioner of Fiscal and Administrative Services.

### **8.3 Work Schedules**

Pursuant to Governor's Policy Directive (GPD) 5, the standard office hours for ADE shall be from 8:00 a.m. until 4:30 p.m. However, the Commissioner of Education or designee shall have flexibility to establish other working hours for departmental personnel so long as all employees work a minimum eight- hour day. The Governor shall approve any deviations from the five-day, 40-hour workweek. An ADE Work Schedule must be filed with the Human Resources Office and written justification provided in the area designated on the form for work schedules outside standard office hours.

ADE Managers or their designees are responsible for insuring that employee work schedules are posted and clearly defined; that adequate staff is available at all times to meet the demands of ADE customers and the public; and that adequate supervisory staff is present and available to workers.

### **8.4 Fair Labor Standards Act**

The main consideration of the Fair Labor Standards Act (FLSA) is that non-exempt staff should work no more than 40 hours per week; this means hours actually worked. For example, a non-exempt employee who arrives at his/her workstation early should not perform any work-related duties until his/her regular work hours. Non-exempt employees should not remain in the building past their eight hour work schedule. All non-exempt employees should follow the work schedule that is on file in the Human Resources Office. In addition, non-exempt employees should adhere to the following:

- Non-exempt employees should not answer the telephone nor greet visitors prior to the beginning of their official workday schedules.
- Non-exempt employees should not answer the telephones during meal periods nor should they answer telephones or greet visitors after the end of their workday. Office calls should not be accepted by non-exempt employees during meal periods. When lunch schedules cannot be worked out within the office to cover the office telephones, calls must be forwarded to other offices agreeing to accept them. However, incoming personal calls may be transferred to the employee on meal breaks if the caller identifies the call as personal.
- Emergencies/special situations should be resolved by the supervisor.
- Breaks cannot be used to lengthen the meal period from 30 minutes to one hour.
- At no time is a non-exempt employee allowed to take work away from the office.

Personnel employed in executive, administrative, professional, or certain computer-related capacities generally are exempt from the provisions of the FLSA. These employees are not required to fill out hourly time records, but must account for daily attendance. In addition, exempt employees will not receive overtime compensation. Any questions concerning work periods should be directed to ADE Office of Human Resources.

## **8.5 Breaks and Lunch Period**

Neither state nor federal wage and hour laws require an employer to provide a break. However, your supervisor may authorize a mid-morning and mid-afternoon break of no more than 15 minutes each to be taken on ADE premises. Breaks cannot be accumulated, cannot cover for late arrival to work, extend lunch hours, or early departure from work. The time spent on authorized breaks must be counted as hours worked. Any exceptions to the above must be approved through the Division Assistant Commissioner and the Assistant Commissioner for Fiscal and Administrative Services.

ADE employees must include either a 30 minute or one hour lunch period on their work schedules. Employees assigned an 8:00 a.m. to 4:30 p.m. work day are allowed 30 minutes for lunch. Lunch periods for all schedules must be taken between 11:00 a.m. and 2:00 p.m. Normally, employees remove themselves from the work location and are therefore not performing any duties.

However, when a non-exempt employee remains at the work location and while eating, no job duties should be performed.

ADE requires all employees to have a work schedule on file in the Human Resources Office.

## **8.6 Telephone Calls**

ADE's telephones are to be used for serving the public in conducting ADE business.

As an employee, you are reminded that you were hired to perform an important job function, therefore, while personal calls are permitted, they should be kept to a minimum and should in no way interfere with the normal work duties or responsibilities of the employee. Personal long distance calls shall not be charged to ADE.

## **8.7 Personal Use of Electronic Communication**

Personal use of cell phones, smart phones, tablets, and other electronic communication devices should be kept to a minimum during an employee's work day and shall in no way interfere with normal work duties or responsibilities of the employee.

- Personal use includes, but is not limited to, using cell phones, smart phones, tablets, or other electronic communication devices for phone calls, text messaging, emails, web browsing, games, and applications.
- It is within the supervisor's discretion to further limit the employee's personal use of electronic communication devices to ensure the productivity of the employee and the advancement of ADE goals.
- Frequent or lengthy personal use of cell phones, smart phones, tablets, or other electronic communication devices can affect productivity, disturb others, and may result in disciplinary action, up to and including termination.

## **8.8 Compensatory Time**

Compensatory (comp) time is time earned, in lieu of a monetary payment, for any work performed in excess of 40 hours in a work week. Comp time is provided at a rate of time and a half and may not be earned in less than 15 minute increments.

Employees whose normal work period is 40 hours a week cannot accrue more than 240 hours in comp time and the employee will be paid for any time that exceeds 240 hours.

Employees that are seasonal, fire protection or law enforcement cannot accrue more than 480 hours

in comp time and the employee will be paid for any time that exceeds 480 hours.

When an employee uses earned comp time, he or she will be paid at the base rate of pay of the current grade. ADE may pay overtime in the combination of payments and comp time at the rate of time and a half as long as it is consistently applied.

When an employee transfers to another agency or terminates employment, the original agency must pay the employee the balance of their unpaid overtime or unused comp time in a lump sum payment at the higher rate of the following:

1. The average regular rate received by the employee during the last 3 years of employment; or
2. The final regular rate of pay received by the employee.

Comp time may only be earned with prior approval from the agency commissioner and must be earned before it can be used. Comp time should be used in lieu of annual leave and may be used in lieu of sick leave.

Agencies are required to maintain complete and accurate records regarding comp time earned and used. Comp time earned shall be included as a separate category on the employee's time sheet.

## **8.9 Time Sheets and Leave Forms**

A bi-weekly time sheet, in the [EASE](#) system, must be kept for every non-exempt employee. It is state and federal law that accurate work records are kept of every hour the employee works and the earned leave time taken. Falsification of a time sheet is a breach of state government policy and is grounds for disciplinary action, up to and including termination. The employee's immediate supervisor and/or time keeper will instruct the employee on how and when the time sheet is to be completed. Accurately recording time worked and completing time sheet and submitting to time keeper is the responsibility of every non-exempt employee. Should the employee make an error on time sheet, notify supervisor immediately. Time worked is the time actually spent on a job(s) performing assigned duties. ADE does not pay for extended breaks or time spent on personal matters.

### **Leave Forms**

Employees are responsible for submitting accurate Employee Request for Leave forms on the [EASE](#) system, for all leave, including sick leave. Application for unexpected sick leave is to be filed within two days after the employee's return to work. Expected sick leave applications (Doctor's appointments, medical tests, etc.) are to be filed prior to leave. The minimum sick leave amount an employee can use is 15 minutes. No lesser amount can be put into the EASE system.

## **SECTION IX – EMPLOYEE-CONDUCT AND DISCIPLINARY ACTION**

### **9.1 Anti-Fraud, Code of Ethics and Employee Workplace Code of Conduct**

This policy outlines ADE's responsibility to create a culture of honesty and high ethical standards. Such a culture is rooted in a strong set of core values (or value system) that provides the foundation for employees as to how the agency conducts its business.

The Department of Inspector General – Office of Internal Audit provides ADE with the directive to develop and implement an Anti-Fraud Policy and Code of Ethics for the following purposes:

1. Creating and maintaining a culture of honesty;
2. Evaluating the risk of fraud and implementing the processes, procedures and controls needed to mitigate those risks; and
3. Developing an appropriate oversight process.

The following elements of an anti-fraud program to create a culture of honesty and high ethics:

1. Setting the tone at the top
2. Creating a positive workplace environment
3. Hiring and promoting appropriate employees
4. Training
5. Confirmation
6. Discipline

Therefore, effective policies must exist to minimize the chance of hiring or promoting individuals with low levels of honesty, especially for positions of trust. Proactive hiring and promotion procedures should include:

1. Thoroughly checking a candidate's education, employment history, and personal references. Periodic training of all employees about ADE's values and code of ethics.

Incorporating into regular performance reviews an evaluation of how each individual has contributed to creating an appropriate workplace environment in line with the entity's goals, values and ethics.

#### **Employee Workplace Code of Conduct**

The Code of Ethics and Workplace Code of Conduct was developed to supplement and clarify existing ADE policies, procedures, and rules. It does not replace, limit, or otherwise alter any existing policies. Employees are expected to familiarize themselves with the Code of Conduct and to abide by the policy.

#### **Standards of Attendance:**

1. Employees must maintain regular and punctual attendance. Departments should follow their established Attendance Policy for reporting absenteeism from work.
2. Employees must obtain permission from their supervisor, in advance (or as soon as possible), when it becomes necessary to arrive late or leave their work areas during working hours.
3. Employees must notify their supervisor or designee if they will be tardy prior to the start of his/her shift (based on departmental guidelines)
4. Employees are expected, whenever possible, to respond to work assignments outside of regularly scheduled hours if necessary.

#### **Interpersonal Relations:**

1. Employees must refrain from using abusive, provocative, or profane language, and should avoid



- creating or being party to a disturbance or physical violence.
2. Employees should observe the principle of mutual respect in their contact with other employees, visitors and students.
  3. Employees should treat others with fairness and impartiality.
  4. Employees should not engage in immoral or indecent behavior on the premises.
  5. Supervisors should ensure a professional work environment in their work areas.

#### **Maintaining Employee Records:**

1. If required, employees must accurately record their working time, and employees may not record the work time of other employees. This can be grounds for immediate dismissal.
2. Employees must not enter inaccurate or false information on any employee records, including, time records, employment applications or other personnel records.

#### **Physical Appearance and Presentation:**

1. Employees are expected to come to work clean, neat, and wearing attire appropriate (in uniform if required) for the work environment. Employees should be mindful and not wear excessive amounts of perfume/cologne.
2. Employees are expected to wear their identification badges while on duty. Badges are to be readily available.
3. Employees must not report to work or be on the premises if impaired by or under the influence of intoxicating liquor or controlled substances, or by giving the appearance of intoxication, including but not limited to smelling of alcohol.
4. Employees who are not on duty should not be on the premises, except for valid reasons.

#### **Social Media:**

1. ADE expects employees to use good judgment when posting on social media sites. Inappropriate or unacceptable postings, disclosures, or other activity on any social media account by an ADE employee is grounds for disciplinary action up to and including termination.
2. Please refer to the ADE Social Media Policy #9.900

#### **Workplace Bullying:**

ADE does not tolerate workplace bullying behavior, whether intentional or unintentional.

1. Workplace bullying is behavior that creates an abusive work environment for any employee.
2. Bullying behavior is behavior in the workplace that a reasonable person would find hostile, offensive, and not related to an employer's legitimate business interests.
3. Workplace bullying can include group bullying, peer-to-peer bullying, supervisor-to-subordinate bullying, and subordinate-to-supervisor bullying. These acts may occur as a single, severe incident or as repeated incidents, and may include, but are not necessarily limited to, the following:
  1. Physical bullying includes pushing, shoving, kicking, etc., assault or threat of a physical assault, and damage to a person's work area, work product, or property.
  2. Verbal bullying includes: (i) slandering, ridiculing, insulting or maligning an employee; (ii) name-calling that could be hurtful, insulting, or humiliating; (iii) using a person as the butt of jokes; or (iv) abusive and offensive remarks (racial or non-racial).
  3. Nonverbal bullying includes directing threatening gestures toward a person or invading personal space after being asked to step away.
  4. Cyberbullying includes bullying an individual using any electronic format, including but not limited to, the Internet, digital technologies, or mobile devices.
  5. Exclusion includes socially or physically isolating, excluding, or disregarding a person in work-related activities.

**Property Access and Use Privileges:**

1. Employees are expected to use the Internet for business purposes only.
2. ADE telephones, fax machines, and other telecommunication devices are intended for official ADE business transactions and should not be used excessively for personal reasons, except in cases of an urgent nature.
3. The use of personal cellular telephones and other electronic devices should be limited to where there is no interference with the completion of job duties and responsibilities.

**Job Duties and Functions:**

1. Employees must follow, within the definitions of the position description, all oral (other duties as assigned) and posted work assignments.
2. Employees must ensure compliance with all policies and procedures.

**Health and Safety:**

1. Employees are not allowed to smoke or use any tobacco products on ADE property except in designated areas 25 feet away from the building. ADE is a Tobacco-Free Property. Employees and visitors are not allowed to use electronic cigarettes (e-cigarette or vapor), use electronic vaping devices, personal vaporizer (PV) and/or electronic nicotine delivery systems (ENDS) and/or alternative nicotine products anywhere on ADE property or in ADE vehicles and equipment owned, leased or operated by or under the control of ADE, except the ADE's area designated for smoking which is limited to the sidewalks adjacent to streets. Smoking materials must be disposed in the receptacles provided.
2. Smoking is prohibited in all vehicles and enclosed areas owned, leased, or operated by the state, its agencies and authorities. Smoking and the use of all tobacco products are prohibited in all public places and enclosed areas within places of employment, including, but not limited to:
  - (a) Common work areas;
  - (b) Auditoriums;
  - (c) Classrooms;
  - (d) Conference and meeting rooms;
  - (e) Private offices;
  - (f) Elevators;
  - (g) Health care facilities;
  - (h) Cafeterias;
  - (i) Employee lounges;
  - (j) Stairs;
  - (k) Restrooms; and
  - (l) All other enclosed areas.
3. Employees are strictly forbidden from sleeping on the job.
4. Employees must observe safe work practices and follow all published safety rules.

**Security Measures:**

1. Employees are strictly forbidden from stealing, misappropriating, or removing from ADE premises any property belonging to ADE, other employees, visitors, or contractors.

**9.2 Performance Improvement Plan (PIP)**

If at any time during the evaluation period the supervisor determines that the employee's performance in one or more of the Performance Standards or the overall performance has fallen below an acceptable standard ("satisfactory"), the supervisor will immediately place the employee on performance-based probation, address those areas, and counsel with the employee. The probationary

period will not exceed 90 calendar days initially.

The supervisor will create a written Performance Improvement Plan (PIP) of action to guide the improvement and/or corrective action. The PIP will clearly define what is expected. The supervisor will consistently monitor and provide feedback/counseling to the employee regarding the area(s) that need to be corrected.

If the employee's performance in any area improves during the probation period but not to the level of satisfactory standards by the end of the probationary period, the rater may extend the time, but is not required to extend, the probationary period for an additional timeframe is not to exceed 30 calendar days. If the employee does not exhibit performance improvement to the satisfactory level at the end of the second probationary period, the employee will be subject to a demotion, transfer, reassignment, or termination.

If an employee is placed on probation, the terms and conditions of the probation will be documented and a copy sent to ADE Human Resources Office for placement in the employee's official personnel file. If the employee's performance improves and the probation period is ended, written documentation of the probation results will be sent to ADE Human Resources Office for placement in the employee's official personnel file.

Employees are allowed to make a formal request for reconsideration of their performance evaluation rating. Employees should always receive a copy of the completed and signed Performance Evaluation packet. See ADE's [PIP form](#).

### **9.3 Attendance and Punctuality**

ADE depends on its employees to ensure the ongoing success of its operations and to meet the challenges of the future. Consistent and timely employee attendance is extremely important in this regard. Unanticipated absence(s) and/or tardiness of an employee, places a burden on other employees and on ADE. For these reasons, all employees are expected to be at their assigned workstation during their scheduled work hours and to adhere to the work schedule established by their supervisor.

In the rare instance when an employee cannot avoid being late to work or is unable to work as scheduled, he or she should notify their immediate supervisor or the designee in advance of the anticipated tardiness or absence. If the immediate supervisor/designee is not available when an absence is called in, the employee should notify the designated ADE staff person. Attendance records are a vital factor in decisions regarding promotions, transfers and discharges; they become a permanent part of the employee's history. Failure to notify immediate supervisor/designee, unauthorized absences, excessive absences or tardiness will result in disciplinary action, up to and including termination.

Unauthorized absences are those occurring when an employee has not obtained required advance approval for leave or has exhausted all leave balances and leave has not been approved for other available types of authorized leave, i.e., regular LWOP, Family and Medical Leave, Maternity Leave, Catastrophic Leave, Military Leave and Court/Jury Duty Leave. Employees who are absent due to a work-related injury or illness and who are receiving Workers' Compensation benefits are exempt from this policy.

Tardiness includes delay in reporting to work at the employee's scheduled starting time, returning late from lunch or scheduled break periods and overdue return to the employee's work site after leaving the work station on official business. Unexplained and unauthorized tardiness is prohibited and will be charged to LWOP, which can be recorded in 15-minute increments. Also, employees will be charged LWOP for unauthorized early departures from the workplace.

### **9.4 Personal Appearance**

Since the appearance of a state employee is a public and personal matter, it shall be the policy of

ADE to encourage all employees to use good judgment and discretion in their dress and appearance.

It shall be the responsibility of all employees to represent ADE to the public in a manner, which shall be courteous, efficient and helpful. ADE employees should always be well groomed and dressed in a manner suitable for the public service environment and to reflect favorably ADE's image.

During the days in which the high temperature is expected to exceed 90 degrees, ADE employees shall be encouraged to dress comfortably, so long as the manner of dress is commensurate with professional standards and the attire is neat and clean (as reflected in GPD11). If an employee is inappropriately dressed, they will be sent home to change. Time lost will be charged to annual, holiday, compensatory or LWOP. Consult immediate supervisor if there are additional questions on appropriate business attire. The employee's supervisor will discuss the subject of personal appearance with the employee if it is determined that the employee's dress does not positively reflect the image of ADE.

## **9.5 Smoking, Drug and Alcohol-Free Workplace**

**Enclosed area:** All space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, that extend from the floor to the ceiling.

**Place of employment:** An enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to: work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways.

**Public place:** An enclosed area to which the public is invited or in which the public is permitted.

**Smoking:** Inhaling, exhaling, burning, or carrying any lighted tobacco product, including cigarettes, cigars, and pipe tobacco; and other lighted combustible plant material.

### **Specific Purposes**

Smoking is prohibited in all vehicles and enclosed areas owned, leased, or operated by the state, its agencies and authorities. Smoking is prohibited in all public places and enclosed areas within places of employment, including, but not limited to:

- a. Common work areas;
- b. Auditoriums;
- c. Classrooms;
- d. Conference and meeting rooms;
- e. Private offices;
- f. Elevators;
- g. Health care facilities;
- h. Cafeterias;
- i. Employee lounges;
- j. Stairs;
- k. Restrooms; and
- l. All other enclosed areas.

**Arkansas policy is that smoking of tobacco or products containing tobacco in any form is prohibited within 25 feet of an entrance to any building owned or leased by the State of Arkansas. It is up to each agency to develop a policy designating certain areas for smoking.**

An individual, person, entity, or business shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this policy or furnishing information concerning a violation to a person, entity or business or to an enforcement authority.

State agencies that receive federal funds certify that they will maintain a drug free workplace. Failure to do so may result in a suspension of contract payments, contract termination or debarment from future government awards. Any employees violating this policy will be subject to discipline up to and

including termination.

State agencies, boards, and commissions are required to certify that they are in compliance with the Drug Free Workplace Act of 1988. It is the policy of the State of Arkansas that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in a state agency's or institution's workplace is prohibited. Violation of this policy can subject employees to discipline up to and including termination.

## 9.6 Personnel Complaints

ADE operates on an open door policy basis. If an employee finds that he or she is faced with a problem involving another employee, whether that employee is a peer or a supervisor, a good faith effort should be made by the individuals involved to reconcile the problem. If the individuals involved are unable to reach a satisfactory resolution, then each party should explain the problem in written form, along with appropriate recommendations for resolution and it will be referred to the next higher level of authority within ADE. Though the Commissioner of Education retains the right to intercede at any point in the process, it is expected that the individuals involved will follow the chain of authority.

The complaint procedure may be utilized not only for work-related disagreements between employees and their peers or supervisors, but may also be utilized if an employee wishes to submit in written form concerns regarding any personnel action taken that affects that employee.

If disciplinary action is taken concerning an employee's employment by the employee's supervisor, the employee may discuss that action with the appropriate Assistant Commissioner in an effort to change or modify the personnel action. This discussion may be confidential if the employee desires. It is within the discretion of the Commissioner of Education and/or the Assistant Commissioner to reverse, modify or affirm the supervisor's decision with respect to disciplinary measures.

The Assistant Commissioner or Commissioner of Education may at their discretion, directly place an employee on probation, suspension without pay or terminate that employee without consultation with the supervisor

## 9.7 ADE Grievance Policy and Procedure (Dispute Resolution)

The purpose of this policy and procedure is to establish a grievance process pursuant to Arkansas Code Annotated § 21-1-701 et seq. for the prompt review, impartial consideration, and equitable disposition of Arkansas Department of Education (ADE) employee grievances.

Eligible employees may resolve grievances through this established policy and procedure to ensure fair resolution within a reasonable period.

Arkansas law establishes a grievance procedure for eligible state employees who have been suspended or terminated from their employment. (Arkansas Code Annotated § 21-1-701 et seq.) Employees should contact their human resources office with questions about their department's grievance policy. For other grievance questions, contact the Office of Personnel Management (OPM) at 501-682-5350 or [OPM.Disputeresolution@dfa.arkansas.gov](mailto:OPM.Disputeresolution@dfa.arkansas.gov). **Administrative Record:** The case file specific to each grievance assembled according to OPM's Administrative Record Rules.

<b>Administrative Review Hearing</b>	The fact-finding process conducted at the state agency by a Hearing Officer or Committee.
<b>Adverse Action</b>	To discharge, threaten, or otherwise discriminate or retaliate against a state employee in any manner that affects the employee's employment including compensation, job location, rights, immunities, promotions, or privileges.

<b>Agency Director</b>	Secretary of Education / Designee
<b>Appeal</b>	A written request by a party to Office of Personnel Management (OPM) for a review of a final decision from the state agency's internal grievance process, either for a final determination or an appeal hearing.
<b>ADE Hearing Officer</b>	An impartial person appointed by Secretary of Education to preside over the administrative review hearing and make a recommendation for resolution to Secretary of Education or designee. The ADE Hearing Officer must be employed by ADE.
<b>Communication in Good Faith</b>	Making a verbal or written report at a time and in a manner that gives DFA reasonable notice of the need to correct a waste or violation.
<b>Disciplinary Action</b>	Termination or suspension of a ADE employee
<b>Dispute Resolution</b>	A procedure that allows parties to constructively manage conflicts through grievances.
<b>Employee</b>	<p>A person regularly appointed or employed in a position of state service by ADE for which he or she is compensated on a full-time or part-time basis for whom a class title and pay grade are established in the appropriation act for ADE in accordance with the Uniform Classification and Compensation Act. The following individuals, while not exhaustive, are not considered an Employee for purposes of this policy and procedure:</p> <ol style="list-style-type: none"> <li>1. Extra-help employee;</li> <li>2. Employee does not include individuals who are on an initial new-hire probationary or;</li> <li>3. Employee does not include a supervisory employee. as defined below.</li> </ol>
<b>Grievance</b>	A complaint by an Employee regarding his or her termination or suspension without pay.
<b>Grievance Officer</b>	The person designated by ADE with the responsibility for coordinating the grievance case and being the liaison between the Employee, ADE, representatives, and the Office of Personnel Management (OPM). The Grievance Officer is employed by ADE
<b>Mediation</b>	A collaborative, problem-solving, and joint decision-making process, through utilization of a third party neutral (Mediator).
<b>Non- Grievable</b>	<p><b>Note: No other form of discipline or the approval / denial of compensation time made by the supervisory employee, are grievable.</b></p> <p><b>In addition, performance evaluations and Performance Improvement Plans (PIP) are not grievable.</b></p>
<b>Office of Personnel Management (OPM)</b>	OPM has the overall responsibility of administering the state's personnel system and establishing necessary policies, procedures and regulations to ensure system uniformity in accordance with state and federal law.
<b>SEGAP</b>	State Employee Grievance Appeal Panel – An impartial appeal panel established to review the facts of the grievance and issue a binding decision; referred to as the Panel.

<b>Supervisory Employee</b>	<ul style="list-style-type: none"> <li>a. An individual with authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of ADE;</li> <li>b. An individual who has the responsibility to direct other employees of ADE by which he or she is employed; or</li> <li>c. An individual whose exercise of authority requires the use of independent judgment and is not of a merely routine or clerical nature. For example, an attorney exercises independent judgment and thought, rather than following a manual or pre-determined formula, when providing his or her opinion.</li> <li>d. An individual who supervises the equivalent of one full-time Employee is not eligible to use the grievance process.</li> </ul>
<b>TSS</b>	Department of Transformation and Shared Services
<b>Violation</b>	An infraction or a breach, which is not a merely technical or minimal nature, of a state statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer.
<b>Waste</b>	A public employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of public funds, property, or a manpower belonging to or derived from state or local political subdivision's resources.
<b>Whistle-Blower</b>	A person who witnesses or has evidence of a waste or violation while employed with a public employer and who communicates in good faith or testifies to the waste or violation, verbally or in writing, to one of the employee's superiors, to an agent of the public employer, or to an appropriate authority, provided that the communication is made prior to any adverse action by the employer.

The policy and procedure established herein recognizes the employment-at-will doctrine, and its exceptions as defined by the Arkansas Supreme Court, and does not confer a property right in employment, either expressed or implied.

The Employee and ADE shall take all reasonable efforts to settle a grievance. This policy and procedure encourages communication and resolution among the Employee and ADE.

The Employee's participation in the grievance process is voluntary and may be withdrawn by the Employee at any step. The Employee is responsible for timely participation in the grievance process, and failure to meet any of the established time frames will result in dismissal of the case.

The Employee or ADE may be represented at each step of the grievance process; however, attorney's fees will not be awarded. Written correspondence from the ADE Grievance Officer will be mailed or emailed to the address provided by the Employee, and anyone at the address who signs for the correspondence is presumed to be signing on behalf of the Employee. Any required time frames will begin the first business day after receipt of the correspondence as indicated by a signature. If the Employee chooses to be represented, there is a presumption that the representative is authorized to communicate on behalf of the Employee, and the Employee is subject to the same time frames for all correspondence received by the representative. The Mediation or hearing will not be postponed due to the late hiring of an attorney or representative.

The Employee is allowed reasonable time during work hours to meet with the ADE Grievance Officer or attend a scheduled Mediation or hearing. A disagreement regarding how much time is reasonable will be decided by OPM.

An Employee is not prohibited from pursuing remedies outside the grievance process. An Employee is

not prohibited from filing a claim under the Arkansas Whistle-Blower Act. ADE is prohibited from retaliating against an Employee for using the grievance process.

## **Agency Procedures**

An eligible Employee may file a grievance for two issues:

1. termination and
2. suspension without pay.

The Employee has five (5) business days from the date of termination or suspension without pay to submit the [Grievance Form](#) to the ADE Grievance Officer. If the Employee requests a whistle-blower hearing, refer to IV.5. An employee shall complete the Grievance Form completely and provide sufficient information detailing the nature of the disputed action. Incomplete forms will not be accepted.

### **1. Final Determination**

- a. The Grievance Officer shall determine whether the complaint meets the eligibility criteria for the grievance process. If the complaint meets the eligibility criteria, the Employee may request Mediation or an Administrative Review Hearing.
- b. If the Grievance Officer determines the Employee is not eligible, the Employee may request a final determination of grievability by OPM. The Employee must make a written request to the Grievance Officer no later than five business days after being notified of the ineligibility determination. The Grievance Officer will submit the documentation to OPM.
- c. If OPM determines the complaint is **not** eligible, the Employee is prohibited from using the grievance process.
- d. If OPM determines that the complaint **is** eligible, the Employee may proceed to the next step, either 2. Mediation or 3. Administrative Review Hearing.

### **2. Mediation**

The Employee and ADE must both agree to participate in the mediation session; otherwise, skip to 3, Administrative Review Hearing.

The Mediation should be held as soon as possible. If the Employee fails to attend the Mediation without providing prior notice to the Grievance Officer or OPM, the Employee's grievance may be dismissed.

If a Mediation session must be rescheduled, the Employee or representative is responsible for communicating with the Grievance Officer regarding availability for the rescheduled Mediation. If the Employee or representative fails to

timely communicate with the Grievance Officer, the Employee's case may be dismissed.

Mediation sessions are confidential; however, the final results will be part of the case file and the final results of the Mediation session may be subject to disclosure under the Arkansas Freedom of Information Act.

**Settlement:** If a settlement is reached during Mediation, the grievance is considered resolved, and the settlement is binding unless a federal or state statute provides otherwise. The settlement is subject to approval by the OPM Director.

**Non-settlement:** If there is a non-settlement, the Employee may request an Administrative Review Hearing. The request must be made to the Grievance Officer no later than three (3) business days after the Mediation.

### **3. Administrative Review Hearing**



The hearing should be held within fifteen (15) business days of receiving the Employee's request, unless a later date is agree upon.

The Grievance Officer will coordinate with the Employee and ADE to schedule the hearing.

The hearing will be audio recorded.

The ADE Hearing Officer will preside over the hearing and issue a typewritten recommendation summarizing the hearing and explaining in detail the basis for the recommendation.

The recommendations should be provided to the Grievance Officer and Secretary of Education no later than seven (7) business days after the hearing transcript is provided to the Hearing Officer and the parties.

The recommendation will become a part of the case file.

The Secretary of Education will accept or reject the recommendation.

The Employee may appeal the Secretary of Education's decision by requesting an Appeal Hearing.

The Employee must file the [Grievance Appeal Form](#) with the Grievance Officer no later than ten (10) business days after receiving the Secretary of Education's decision. If the Employee does not timely appeal, the Secretary of Education's decision will stand.

#### *NOTE*

*ADE may prohibit the Human Resources Manager, Grievance Officer, Chief Fiscal Officer and ADE Legal staff from participating in a grievance as a witness or in any other circumstance. The Grievance Officer acts as the coordinator for the grievance only. The ADE Legal staff may act as ADE's representative*

## **Appeal Hearing**

### **1. SEGAP**

OPM will maintain the roster of SEGAP members and assign the case to three members. One member will serve as the chair and must be an Arkansas licensed attorney and current state employee of the Executive Branch. The other two members must be current state employees of the Executive Branch.

### **2. Scheduling the Appeal Hearing**

The Appeal Hearing should be held within twenty-five (25) business days of OPM receiving the request from the Grievance Officer. The Appeal Hearing will not be postponed or delayed unless compelling circumstances are presented to OPM prior to the start of the Appeal Hearing. The final decision to postpone or delay is at the discretion of OPM.

### **3. Burden of Proof**

ADE has the burden to prove that the termination or suspension was consistent with the ADE's disciplinary policy. The Employee is then given the opportunity to rebut, contradict, or discredit ADE's case.

### **4. Public Hearing**

The Appeal Hearing is open to the public and will be audio recorded by OPM; however, any testimony or evidence that is otherwise confidential under federal law, state law, rule, or regulation will remain confidential.

## 5. Decision

SEGAP should issue a written recommendation no later than ten (10) business days after the hearing and forward the recommendation to OPM. The recommendation may be appealed pursuant to VII. TSS SECRETARY APPEAL. If the SEGAP recommendation is not appealed to the TSS Secretary, it shall become binding on the Employee and ADE.

### **Whistle-Blower Hearing**

An Employee who has been terminated may request a whistle-blower hearing if the Employee is alleging the termination is an adverse action for the Employee exercising one of the following protected activities under the Arkansas Whistle-blower law:

- (a) Communicating in good faith to an appropriate authority the existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state or a political subdivision of the state;
- (b) Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review;
- (c) Objecting or refusing to carry out a directive the employee reasonably believes violates a law, rule, or regulation adopted under the authority of the laws of the state or a political subdivision of the state; or
- (d) Reporting a loss of public funds under Ark. Code Ann. § 25-1-124.

The Employee may request a hearing by submitting the [Grievance Form](#) to the Grievance Officer no later than five (5) business days after the termination. The Grievance Officer will timely notify OPM of the Employee's request for a whistle-blower hearing.

Along with the Grievance Form, the Employee must submit evidence that he or she committed one of the actions in (a) through (d) prior to being terminated. Documentation that is otherwise confidential under federal or state law will remain confidential. OPM will review the documentation to determine whether it meets the requirements for a whistle-blower hearing. If the Employee fails to show that he or she committed one of the actions (a) through (d), then OPM will deny the request for a hearing. A denial of the whistle-blower complaint does not preclude the Employee from pursuing any additional grievance complaints.

An ADE employee does not waive his or her right to file a claim under the Arkansas Whistle-blower Act as set out at Ark. Code Ann. § 21-1-603. For more information about Whistle-Blower Protection, see Policy #22.

OPM will schedule the whistle-blower hearing to be held within fifteen (15) business days of receiving the request, unless the Employee and ADE mutually agree to a later date.

OPM will assign the case to SEGAP. SEGAP will conduct the hearing and determine if the Employee proved that a reasonable person would conclude that the termination was the result of the Employee exercising one of the actions in (a) through (d). The Employee must present the case in its entirety. ADE will have an opportunity to rebut the Employee's allegation and case presentation. The Employee and ADE can request witnesses to testify on their behalf and must provide the witness list to the Grievance Officer at least four (4) business days prior to the hearing. The Grievance Officer will notify any witnesses who are employed by ADE.

The Employee and ADE will each have two (2) hours to present their case. SEGAP has the

discretion to grant additional time.

If the whistle-blower allegation is regarding a confidential matter, the hearing will be a closed hearing; however, it will be audio-recorded, and the Employee or ADE may request a copy of the hearing recording.

If SEGAP determines that the Employee met the burden of proof using the reasonableness standard outlined above, the Employee will either be;

- i. reinstated to his or her position until the conclusion of the ADE's grievance process; or
- ii. reinstated to his or her position and placed on paid administrative leave until the conclusion of the ADE's grievance process.

The Employee or ADE may appeal from the whistle-blower decision following the process outlined in the VII. TSS SECRETARY APPEAL.

### **TSS Secretary Appeal**

The Employee or ADE may file an appeal from SEGAP after either a whistle-blower hearing or an Appeal Hearing.

The appeal must be submitted to the Grievance Officer no later than seven (7) business days after receiving SEGAP's written decision.

The Grievance Officer must timely provide a copy of the appeal to the opposing side and to OPM. The nonappealing side may file a response to the appeal no later than seven (7) business days after receiving the appeal.

All appeals to the TSS Secretary will be determined solely on the Administrative Record. The TSS Secretary will review the Administrative Record, including the appeal and any response to the appeal, and accept or reject the recommendation. The TSS Secretary is authorized to order back pay, restore leave and health insurance benefits, and any other benefits the Employee would have received if the termination or suspension had not occurred.

The TSS Secretary's decision will be issued no later than fifteen (15) business days after receiving the appeal or response to the appeal, whichever is later. Any appeal from the TSS Secretary's decision will not be accepted.

OPM shall maintain a copy of all Administrative Records.

## **9.8 Disciplinary Policy and Procedure**

### **POLICY**

ADE employees are required to meet, at a minimum, satisfactory job-performance standards and follow minimum conduct standards as provided in the ADE Anti-Fraud\_Code of Ethics\_and\_Employee Workplace Code of Conduct policy. ADE recognizes that the appropriate disciplinary action may vary depending upon the violation and specific circumstances; therefore, ADE supervisors are not required to implement progressive discipline .behavior that is unlawful or illegal, whether committed during or outside of work hours, may result in immediate termination. Such behavior may be reported to local law enforcement authorities. Similarly, theft, substance abuse, intoxication, physical altercations, and other acts of violence at work may result in immediate termination.

Nothing in this policy provides any contractual rights regarding employee discipline. Similarly, nothing in this policy modifies or alters the employment-at-will relationship between ADE and its employees. Any technical error in administering discipline that does not prejudice the substantive rights of an employee will be deemed a harmless error and will not be grounds for overturning ADE's decision if the employee's behavior otherwise warrants disciplinary action.

## AVAILABLE DISCIPLINE ACTIONS

Supervisors should contact the ADE Human Resources (HR) Office prior to administering disciplinary action greater than a verbal warning. The HR Office will aid the supervisor to determine the appropriate disciplinary action. Each case will be reviewed individually on its own merit. Proper documentation for each disciplinary action is essential.	
<b>Verbal Warning</b>	The supervisor may issue a verbal/oral warning for first-time occurrences of minor offenses or misconduct. This creates an opportunity for the immediate supervisor to bring attention to the existing performance, conduct, or attendance issue. The supervisor should discuss with the employee the nature of the issue and the handbook or policy violation, if applicable. Though this is a "verbal" warning, it will be documented and maintained by the supervisor as it may be used as justification for a later disciplinary action or as part of an employee's performance evaluation. Documentation for a verbal warning is only maintained by the supervisor and is not placed in the employee's HR personnel file.
<b>Written Warning</b>	A written warning documents performance, conduct, or attendance issues and consequences. The supervisor will meet with the employee to review any additional incidents or information about the performance, conduct, or attendance issues as well as any prior relevant disciplinary actions. A written warning will remain in an employee's HR personnel file for one year after the date on the written warning. <b>Consultation with Human Resources must occur prior to issuing a written warning.</b>
<b>Involuntary Demotion</b>	An employee may be involuntarily demoted to a lower-level position to address performance, attendance, or conduct issues. The employee will receive a ten percent (10%) reduction in pay. <b>Consultation with Human Resources and the appropriate Director or Deputy Commissioner must occur prior to implementing an involuntary demotion.</b>
<b>Suspension Without Pay</b>	Some performance, conduct, or safety incidents may make the temporary removal of the employee from the workplace the most appropriate action. These infractions may include but are not limited to, HIPAA policy violations, sexual harassment, harassment, violence (including implied), or violations of employee or workplace safety. When immediate action is necessary to ensure the safety of the employee or

	<p>others, or when the nature or severity of the action warrants temporary removal, an employee may be suspended without pay.</p> <p>In compliance with the Fair Labor Standards Act (FLSA), a suspension without pay of salaried, exempt employees is reserved for serious workplace safety or conduct issues. The employee may be suspended without pay in one or more full-day increments consistent with federal, state, and local wage and hour employment laws. Employees may not substitute accrued annual or sick leave in lieu of the unpaid suspension.</p> <p><b>Consultation with Human Resources and the appropriate Director or Deputy Commissioner must occur prior to placing an employee in.</b></p> <p>The Suspension and Administrative Leave form must be completed and submitted to Human Resources to be processed. A copy of the form is located on the <a href="#">ADE Intranet</a>.</p>
<p><b>Termination</b></p>	<p>Employees may be terminated without prior notice or disciplinary action. Employees may be terminated as a result of the employee failing to comply with a process improvement plan. A supervisor's recommendation to terminate employment must be approved by Human Resources and the Secretary of Education.</p> <p>Immediate termination may be appropriate when the following flagrant misconduct occurs:</p> <ul style="list-style-type: none"> <li>a. If within a twelve-month period, an employee receives <ul style="list-style-type: none"> <li>i. a third disciplinary action for the same infraction or,</li> <li>i. three written warnings (or above) for unrelated infractions;</li> </ul> </li> <li>a. Substandard performance, misconduct, or other offenses during an employee's probationary period; or</li> <li>a. One of the following flagrant actions: <ul style="list-style-type: none"> <li>i. Theft of other employee or agency property or money</li> <li>i. Carrying of unauthorized firearms on the premises</li> <li>i. Use of drugs or alcohol on the premises</li> <li>i. Acts of violence or a threat directed at another employee or visitor</li> <li>i. Violating an employee's confidentiality (</li> <li>i. Falsification of own or other employee's records in connection with work (for example clocking in or out for another employee)</li> </ul> </li> </ul> <p>Please note this list is not all-inclusive. Acts of flagrant</p>

	misconduct must be considered individually and all surrounding circumstances must be considered.
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## **Administrative Leave**

An employee may be placed on administrative leave during investigations involving flagrant misconduct as identified in the termination category. Administrative leave is appropriate when an employee's absence during an investigation is in the best interest of the employee and ADE. The employee may be placed on administrative leave pending the conclusion of the investigation.

### **Internal Investigations:**

Internal investigation is defined as an investigation conducted by ADE. Internal investigations should be concluded within 10 – 14 days or as soon as practicable if additional time is necessary. While on administrative leave due to an internal investigation, an employee may request to use accrued compensation (Comp) time first, then annual (vacation) leave. If the employee uses comp time or annual leave during this period, the leave time may be restored to the employee's leave balance if the employee is reinstated as an active employee at the conclusion of the investigation.

### **External Investigations:**

An external investigation is defined as an investigation conducted by an outside entity. (ex: external investigations for ASD and ASB). In this case, additional time may be required for external investigations. The employee may request to use accrued compensation (Comp) time first, then annual (vacation) leave. If an external investigation extends beyond two (2) weeks (14 calendar days) and the employee has exhausted all comp time and annual leave, the administrative leave can be amended to paid administrative leave with the approval of the ADE HR Director. If the employee volunteers to use comp time or annual leave during this period, the leave time may be restored to the employee's leave balance if the employee is reinstated as an active employee at the conclusion of the investigation.

At the conclusion of an internal or external investigation, the employee may either be dismissed (effective the last day worked or of paid leave) or reinstated without loss of pay and without loss of comp time or annual leave.

If an employee is reinstated at the conclusion of an investigation (internal or external), and annual leave or compensation time was paid during this period, no additional pay will be applied and the comp time and annual leave time used during the investigation will be reinstated. If the employee is terminated, the payout of any remaining annual leave will follow the annual leave policy.

The employee must request to use comp time or annual leave

	<p>at the time the employee receives notification of administrative leave. Sick leave cannot be used during administrative leave. If an employee does not have compensation time or annual leave, administrative leave will be unpaid.</p>
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	<p>The Disciplinary and Corrective Action form must be completed and submitted to the HR Office to be processed. A copy of the form is located on the <a href="#">ADE Intranet</a>.</p>
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<b>Notice of Disciplinary and Corrective Action Form</b>	<p>A document explaining the reason for discipline and details of expectations to correct the action resulting in the discipline. This document must be completed by the supervisor and submitted to the HR Office for cases involving a written warning, involuntary demotion, suspension, administrative leave, or termination, to be placed in the employee's official HR personnel file. The Notice of Disciplinary and Corrective Action Form can be found on the <a href="#">ADE intranet</a>.</p>
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## **PERFORMANCE IMPROVEMENT PLAN (PIP)**

Before this process is engaged, a supervisor should meet with the employee to identify the concerns about the employee's performance and how his/her performance can be improved. During this discussion, the supervisor should try to establish the reason(s) for the employee's performance, which may include lack of training, lack of clear procedures, and/or personal and/or health problems. This process is used in conjunction with a coaching and counseling approach to assist employees with improving performance.

If an employee falls at or below "needs development" within the performance evaluation process in one or more measurements, the supervisor should immediately address those areas and provide coaching and counseling to the employee. This will allow the employee an opportunity to improve in identified areas before the end of the evaluation period. The PIP will not exceed 90 calendar days, initially. The supervisor must clearly define what is expected, consistently monitor, and provide feedback, coaching and counseling to the employee. Please see the Performance Evaluation Policy for additional information.

If the employee is placed on a PIP, the terms and conditions must be documented, and a copy sent to the Human Resources Office for placement in the employee's official personnel file. If the employee's performance improves and the PIP is ended, written documentation of the PIP results should be sent to the Human Resources Office for placement in the employee's official personnel file.

1. This procedure is designed to be used when informal discussions do not lead to the employee improving his/her performance to an acceptable level.
2. Where an employee's poor performance is believed to be the result of deliberate negligence, or where serious errors have been made by him/her to the detriment of the organization, ADE may decide to use the disciplinary procedure instead.
3. A written record of all meetings conducted under this procedure will be made by the person holding the meeting. The Performance Improvement Plan (PIP) is designed to facilitate constructive discussion between a staff member and his/her supervisor.
4. The PIP clarifies work performance to be improved, expected outcomes, and support and observations management will provide. An employee may be placed on a PIP at any time during his/her employment when his or her performance does not meet standards.
5. During the PIP period, the employee will be monitored to assess if the appropriate improvement is being made. Supervisors may work with the Human Resources Office to develop an appropriate PIP for the employee to ensure consistent and fair treatment. The length of the PIP does not guarantee continued employment for that time period.
6. At any time during the PIP period, if the employee is not making progress or other issues arise, formal disciplinary action may be taken. A copy of the PIP will be placed in the employee's personnel file.

## **SUPERVISORS RESPONSIBILITIES**

1. Discipline should be applied consistently and impartially. Supervisors are responsible for determining the appropriate level of discipline for a specific handbook or policy violation with the assistance and guidance of Human Resources. Supervisors should consider all facts and mitigating or aggravating circumstances surrounding the violation. Supervisors may combine disciplinary actions depending on the nature of the violation. Supervisors may issue a corrective-action plan in conjunction with any disciplinary action (except termination). In addition to the mentioned disciplinary actions, supervisors are encouraged to have non-disciplinary coaching and counseling sessions.
2. Supervisors should provide employees with notice of possible disciplinary action and the opportunity to respond. Discipline should be administered in private, and the supervisor should maintain confidentiality of all disciplinary actions. Supervisors will prepare written documentation of the disciplinary action and clearly describe expectations and steps the employee must take to improve his or her performance, conduct, behavior, or attendance issue. The employee will be asked to sign the document to demonstrate his or her understanding of the issues and the corrective action needed. The disciplinary action will include a statement that the employee may be subject to additional discipline, up to and including termination, for failure to meet expectations.
3. The employee will be provided a copy of the notice of disciplinary action form, and a copy will be placed in the employee's official HR personnel file. Supervisors may refer to previous disciplinary actions for up to one (1) year from the date of the last written warning for purposes of implementing more severe disciplinary action, with the exception of Suspension without Pay, Involuntary Demotions, and an "at fault" Administrative Leave. Suspension without pay, involuntary demotion, and an "at fault" Administrative Leave will remain active for two (2) years from the date of suspension or administrative leave. Supervisors should consult with the Human Resources Director for all actions beyond a verbal warning.

## DOCUMENTATION

Documenting Disciplinary Actions, Corrective Actions, Suspensions without Pay, Administrative Leave, and Dismissals. Documentation surrounding any performance, attendance, or conduct issues is **vital** when providing any form of warning, corrective action, or coaching and counseling session. Any documents including emails, handwritten notices, discussion notes, or forms should be saved and included in the employee's departmental personnel file.

1. Disciplinary warnings, Suspensions without Pay, Administrative Leave, and Dismissals should be documented on a Disciplinary and Corrective Actions form and the Suspension and Administrative Leave form, which can be found on the ADE Intranet. Supervisors must provide a copy of completed forms to the employee and Human Resources.
2. Human Resources will review and process the form for inclusion in the employee's official personnel file. Documentation for a verbal warning is only maintained by the supervisor and is not placed in the employee's HR personnel file.
3. If an employee refuses to sign the written warning or other HR forms, the supervisor, or witness, must state in the comment section "employee chose not to sign."
4. Instructions for completion of the forms are attached to the Disciplinary and Corrective Actions form and the Suspension and Administrative Leave form.

## RELATED POLICIES

Performance, Goals, and Compensation System (PGCS) - TSS Policy #29. Authority: Ark. Code Ann. § 21-5-1001 and § 21-5-1101

*Disclaimer: If any portion of this Policy is found to be in conflict with the Office of Personnel Management (OPM) policies, and/or state and federal laws or rules, the laws, rules and OPM policies will supersede any information /provisions of the Policy.*

### 9.9 ADE Social Media Policy

This policy provides guidance for an employee's use of social media, which should be broadly understood for purposes of this policy to include blogs, wikis, microblogs, message boards, chat rooms, electronic newsletters, online forums, social networking sites, and other sites and services that permit users to share information with others in a contemporaneous manner.

ADE employees are prohibited from posting to social media sites using ADE information systems or an ADE email address unless prior approval is received through the appropriate ADE Communications personnel. When engaged in any form of social media, ADE employees must not reveal any confidential information related to their position or the agency in general.

#### Professional Use

The following principles apply to professional use of social media on behalf of the ADE as well as personal use of social media even in situations where the password or other privacy controls are implemented:

1. Employees should be aware of the effect their actions on social media may have on their images, as well as the ADE's image;
2. Employees should use their best judgment to avoid posting material that may be inappropriate or harmful to ADE, or its employees;
3. Prohibited social media conduct includes, but is not limited to, posting commentary, content, or images that are defamatory, pornographic, proprietary, harassing, libelous, interfere with job performance, or that can create a hostile work environment;
4. Employees are not to publish, post, or release any information that is considered confidential or not public. If there are questions about what is considered confidential, employees should check with their supervisor;
5. Use of social media on ADE equipment and during working hours is prohibited. In addition, personal use of social media that is found to violate the principles set forth herein may subject an employee to disciplinary action up to and including termination.

### **Employee Responsibilities**

ADE employees shall not attribute personal statements, opinions, or beliefs to ADE when using social media. If an employee is expressing his or her beliefs and/or opinions, the employee may not, expressly or implicitly, represent themselves as an employee or representative of ADE. ADE's trademarks, logos, and any other ADE

intellectual property may not be used in connection with any social media activity, without prior approval. Inappropriate or unacceptable use by an employee is a basis for disciplinary action up to and including termination. Any violation of this policy may result in disciplinary action.

### **9.10 Political Activity**

State employees can, should and are encouraged to participate in the election process so long as assistance to candidates is rendered on the employee's own time and State property is not involved. Employees are not to endorse candidates in their official capacity as State employees, this includes the Governor. A person's status as an employee of the State is public knowledge. Public endorsements of a candidate can easily be interpreted as endorsements of an official capacity. The legal provisions can be summarized as follows:

1. State employees are prohibited from engaging in partisan political activity during the hours they are performing work for and being paid by ADE.
2. Political banners, posters or literature should never be allowed to be displayed on or in any State office.
3. Political bumper stickers or decals should never be displayed on or in a State car. State vehicles must not be used during or after working hours to promote or assist the candidacy of any person in any way. State employees may not display political advertising on personal vehicles when using these vehicles in the performance of official duties for which they shall be reimbursed by the State.

No State official (whether elected or appointed) shall assess employees for any political purpose or use threats or coercion to require or persuade an employee to contribute to a particular candidate or cause.

Requests for leaves of absences to work in campaigns should be submitted to the employee's Assistant Commissioner. Each Assistant Commissioner should establish an internal policy as to whether such leave without pay shall be allowed in that division.

An employer shall schedule the work hours of employees on election days so that each employee will

have an opportunity to exercise the right to vote.

In addition to these prohibitions established by Arkansas law and by administrative policy, there are other specific limitations which apply to employees whose salaries are either partially or totally paid from federal funds. These rules are established by the Federal Hatch Act.

For specific questions about Arkansas Election Law consult the Secretary of State's Elections Division (501-682-1010).

Questions regarding the Federal Hatch Act as it relates to federally-funded State employees may be answered by the Office of Special Counsel in Washington, D.C. <http://www.osc.gov>

## 9.11 Political Freedom

**Elected public official:** The Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, Commissioner of State Lands, member of the Arkansas Senate and member of the Arkansas House of Representatives.

**Public employee:** Any person providing services for the State of Arkansas, a county, a municipal corporation, or any other political subdivision of this state for which compensation is paid.

**Public employer:** The State of Arkansas and each political subdivision of the State of Arkansas.

It is unlawful for a state employee to be prohibited from communicating with an elected public official concerning matters related to the employee's job, except for matters exempted under the Arkansas Freedom of Information Act, or from exercising a right or privilege under the Freedom of Information Act.

It is unlawful for a state employee to be subjected to discipline, threats of discipline, reprimands, either oral or written, or notations in their personnel files disciplining or reprimanding or otherwise be discriminated against, because the employee exercised the right to communicate with an elected public official or exercised a right or privilege under the Arkansas Freedom of Information Act.

A state employee who has intentionally made untrue allegations to an elected official concerning matters related to the employee's job may be subject to discipline.

A person who intentionally violates a provision is guilty of a Class A misdemeanor.

## 9.12 Exit Interviews

In an effort to gather information regarding the workplace experiences of regular employees who are leaving ADE, the employee is encouraged to complete an exit interview prior to departure. Exit interviews are not mandatory but are considered an important way to identify how ADE can maintain a positive and productive environment for its employees. The immediate supervisor will attempt to schedule an exit interview with employees who are departing voluntarily. The employee will turn in the Handbook, keys, ID badge, cellular phone, pager, ADE software, laptop computer, peripherals (calculators/digital cameras), parking pass and any other ADE related property including intellectual property and equipment they may have been assigned. Employees who are transferring or are discharged may request an exit interview with a staff member of the Human Resources Office. An exit interview form is available on ADE Human Resources Site at [Human Resources System - Login \(arkansas.gov\)](http://arkansas.gov) forms.

## 9.13 Arkansas Whistle Blower Act/Fraud Detection

**Adverse action:** Means to discharge, threaten, or otherwise discriminate or retaliate against a state employee in any manner that affects the employee's employment, including compensation, job location, rights, immunities, promotions, or privileges.

**Appropriate authority:** Means a state agency or organization having jurisdiction over criminal law

enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, investigator, auditor, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the office of the Attorney General, the office of the Auditor of state, the Arkansas Ethics Commission, the Legislative Joint Audit Committee and the Division of Legislative Audit, and the offices of the various prosecuting attorneys having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.

**Communicate:** Means to give a verbal or written report to an appropriate authority.

**Public employee:** For the purpose of this policy is a person who performs a full or part-time service for wages, salary, or other remuneration for a public or state employer, and includes without limitation a state employee.

**Public employer:** Means ADE, department, board, commission, division, office, bureau, council, authority or other instrumentality of the State of Arkansas, including the offices of the various Arkansas elected constitutional officers and the Arkansas General Assembly and its agencies, bureaus, and divisions; a state-supported college, university, technical college, community college or other institution of higher education or department, division, or agency of a state institution of higher education; The Arkansas Supreme Court, the Court of Appeals, the Administrative Office of the Courts, the circuit courts, and prosecuting attorneys' offices.

**Violation:** Means an infraction or a breach, which is not of a merely technical or minimal nature, of a state statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer.

**Waste:** Means a public employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of public funds, property, or manpower belonging to or derived from state or local political subdivision's resources.

**Whistle-Blower:** Means a person who witnesses or has evidence of a waste or violation while employed with a public employer and who communicates in good faith or testifies to the waste or violation, verbally or in writing, to one of the employee's superiors, to an agent of the public employer, or to an appropriate authority, provided that the communication is made prior to any adverse action by the employer.

### **Whistle-Blower Notification**

All ADE offices must post a printed sign (supplied by the Arkansas Legislative Audit on its website) that:

- a. Inform ADE employees of their rights under the Arkansas Whistle-Blower Act,
- b. Describes an appropriate authority to whom an ADE employee may make a good faith communication regarding fraud, waste or abuse in government; and,
- c. The number for the hotline for the reporting of fraud, waste, or abuse in government (Ark Code Ann. § 21-1-608(b)(1-2).

### **Reward**

An employee communicates a waste or a violation to an appropriate authority, and that communication results in savings of state funds, the state employee shall be eligible to receive a reward equal to 10% of the savings in state funds as a result of the changes based on that communication.

No reward shall be paid in excess of \$12,500.

If the reward amount is greater than \$12,500, the reward shall be referred to the General Assembly for

an appropriation.

If a reward is appropriated to a state employer for the benefit of an employee, it shall be paid from the funds available to the state employer.

A state employee is not eligible for a reward for a communication that is part of the state employee's normal course of job duties, unless that communication is not acted upon by the state employer within 90 days.

A report by an employee of a loss of public funds is considered a communication in the normal course of the employee's job duties if the employee:

1. Handles or exerts control over the funds of the employer;
2. Participates in making decisions or recommendations concerning the deposit, investment, or expenditure of the funds of the employer; or
3. Is responsible for auditing the funds of the employer.

### **Report by appropriate authority**

Upon the resolution of a communicated matter, the appropriate authority shall provide a written report detailing the content of the communication and the outcome of the communication to the:

1. State employee who made the communication; and
2. State employer that was the subject of the communication.

A state employee may choose to forego a reward or choose to remain confidential and request to the appropriate authority that the report not include their name or identifying information. If a state employee makes this request, they are not eligible to receive a reward. The name and identifying information of a state employee requesting confidentiality is not disclosable under applicable state or federal laws.

After receiving the report from the appropriate authority, the state employer must within 30 days of the end of the first full fiscal year in which the changes based on the communication were implemented, issue a report. The report must contain the following:

- A. The total savings in state funds resulting from the communication for the first full fiscal year in which the changes were implemented;
- B. The name of the state employee who made the communication, unless the state employee chose to maintain confidentiality; and
- C. The reward amount the state employee is eligible to receive. If a state employer concludes that the state employee is not eligible for a reward, the reasons shall be stated in the report.

The state employer report must be submitted to the Performance Evaluation and Expenditure Review Subcommittee of the Legislative Council or, if the General Assembly is in session, the Review/PEER Subcommittee of the Joint Budget Committee and the Clerk of the Arkansas State Claims Commission. The report must also be submitted to the state employee who made the communication, unless that state employee chose to remain confidential.

### **Right to appeal**

The state employer's report to the state employee must include a notice of the right to appeal to the Arkansas State Claims Commission ("Commission"). A state employee who files an appeal is not subject to adverse action. The state employee has 40 days of the submission of the state employer report to file an appeal and the state employee must follow the rules and procedures of the Commission. The state employee who files an appeal has the burden of proving by a preponderance of the evidence that:

1. The report from the state employer does not accurately reflect the savings attributable to the changes made based on the communication; or
2. The state employer did not accurately assess the determination of a reward, including denying a reward to the state employee.
3. When the Commission notifies the parties of its decision, it must notify them of a right to appeal that decision. The decision of the Commission may be appealed only to the Claims Review Subcommittee of the Legislative Council or, if the General Assembly is in session, the Claims Subcommittee of the Joint Budget Committee. The notice of appeal must be filed with the Commission within 40 days after the Commission renders a decision. The Commission is responsible for notifying the Legislative Council or Joint Budget Committee and all parties to the matter when a notice of appeal is filed.
4. Within 30 days of the end of the appeal period to the Commission or the resolution of an appeal to the Claims Review Subcommittee, whichever is later, the clerk of the Commission shall notify the state employer of the reward amount to be paid to the state employee. The state employer shall deliver a check to the clerk of the Commission who must deposit the check as a nonrevenue receipt into the Miscellaneous Revolving Fund from which the state employee will be paid.

A state agency or institution of higher education is prohibited from taking adverse action against an employee for reporting the loss of public funds.

### **Communicate in good faith**

ADE is prohibited from taking adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of a waste of public funds, property, or manpower, including federal funds, property, or manpower, administered or controlled by a public employer or a violation or suspected violation of a law, rule, or regulation adopted under the law of this State or a political subdivision of the state to an appropriate authority. The communication shall be made at a time and in a manner which gives the public employer reasonable notice of the need to correct the waste or violation.

An employee communicates in good faith if there is a reasonable basis in fact for the communication of the existence of waste or of a violation. Good faith is lacking when the state employee does not have personal knowledge of a factual basis for the communication or where the state employee knew or reasonably should have known that the communication of the waste or of the violation is malicious, false or frivolous.

A state agency shall not take an adverse action against a state employee because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review.

A state agency shall not take an adverse action against a state employee because an employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of laws of the state.

### **Civil action**

A state employee who alleges a violation of Whistle-Blower protections may bring a civil action for appropriate injunctive relief or actual damages, or both, within 180 calendar days after the occurrence of the alleged violation.

An action commenced under this law may be brought in the chancery court for the county where the alleged violation occurred or for the county where the complainant resides, or in the chancery Court of Pulaski County.

To prevail in an action brought under this law, the state employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on his behalf, engaged or intended to engage in a protected activity.



As used in this section "damages" means damages for a job-related injury or loss caused by each violation of the Whistle-Blower Act, including, but not limited to, fringe benefits, retirement service credit, compensation for lost wages, benefits, and any other remuneration, and reasonable court costs and attorneys' fees.

A state agency shall have an affirmative defense to a civil action brought by a state employee if the adverse action taken against the state employee was due to employee misconduct, poor job performance or a reduction in workforce unrelated to a communication made pursuant to the Whistle-Blower protections. The state agency must prove by a preponderance of the evidence that the existence of the state employee's misconduct, poor job performance or a reduction in workforce is unrelated to the communication.

A court in rendering judgment under this act may order any or all of the following remedies:

1. An injunction to restrain continued violation of the provisions of the Whistle-Blower Act;
2. The reinstatement of the public employee to the same position held before the adverse action or to an equivalent position;
3. The reinstatement of full fringe benefits and retirement service credit;
4. The compensation for lost wages, benefits, and any other remuneration;
5. The payment by the state employer of reasonable court costs and attorney's fees.

A court may also order that reasonable attorney's fees and court costs be awarded to the employer if the court determines that an action brought by a state employee under this act is without basis in law or fact. Provided, a state employee shall not be assessed attorney's fees under this section if, after exercising reasonable and diligent efforts after filing the suit, the state employee files a voluntary non-suit concerning the employer within 60 calendar days after determining the employer would not be liable for damages.

### **Expedited Hearing**

An employee may request an expedited hearing regarding the employee being reinstated to his or her position until the resolution of the civil action.

If at the hearing the employee can show that a reasonable person would conclude that the termination was the result of adverse action for the employee exercising his or her right under the Whistle-Blower law, the court will order the employee be 1) reinstated to his or her position until the conclusion of the civil action; or 2) reinstated and placed on paid administrative leave until the conclusion of the civil action.

### **Mediation**

A state employee may voluntarily participate in mediation under OPM's mediation program if they wish to resolve a dispute between them that involves an adverse action taken against the state employee. Voluntary mediation shall occur before a civil action has been initiated in court in which the state employee and state agency are parties.

### **FOIA and confidentiality**

The Whistle-Blower law shall not be construed to permit a disclosure which would diminish or impair the rights of any person or any public official to the continued protection of confidentiality of records or working papers where a statute or the common law provides for protection.

Generally, materials and documentation, including notes, memoranda, recordings, preliminary drafts of investigation reports, and other data gathered in connection with a communication regarding the existence of waste or of a violation are privileged and confidential and exempt from disclosure under FOIA. Confidentiality also applies to communications received by a telephone hotline. Final reports and any supporting documentation regarding communication of the existence of waste or violation are

open to public inspection and copying, except documents that are otherwise exempt under law. Additionally, the name and identifying information of the employee eligible to receive a reward may be disclosed, unless the employee requests confidentiality.

## REPORTING

State employees may report allegations directly to the DFA Internal Auction Section at 510-682-0370 or 800-952-8248. Complaint forms should be mailed to:

Department of Finance and Administration  
Office of Accounting—Internal Audit Section  
1515 W. 7th Street, Suite 215  
Little Rock, AR 72201

## Fraud Detection

A public employer is required to obtain a criminal background check before hiring an applicant for a position with supervisory fiduciary responsibility over all fiscal matters. The Arkansas State Police will conduct the background check. The applicant must sign a release of information to the public employer. The releasable information will be forwarded to the public employer. The public employer may pay for the criminal background check or require the applicant to pay for it.

**A public employee with supervisory fiduciary responsibility over all fiscal matters is required to report a loss of public funds to Arkansas Legislative Audit (Legislative Audit) within five business days of discovering the loss. The report can include apparent or unauthorized disbursements of public funds or apparent theft or misappropriation of public funds or property. An employee who purposely fails to report is guilty of a Class A misdemeanor.**

## 9.14 Supervisors Mandatory Training

The Learning tab on [Success Factors](#) (myCAREERS), allows you to take charge of your learning by providing the online tools you need to manage your own training activities, including registrations, waiting list sign-ups, and cancellations.

**The Governor's Executive Order 94-07** establishes a supervisory management institute and charges the Office of Personnel Management (OPM) with developing policies for the same.

Supervisory level personnel must complete specific training courses established by OPM.

**These classes must be completed within six months of assuming new supervisory duties.**

Register for classes on [Success Factors](#) (myCAREERS) to attend classes. Click the learning tab \_\_instructor led tab \_ click to register for class.

- Hiring Talent
- HRkansas for Supervisors
- Interpersonal Communication
- Discipline and Grievance Handling

## **SECTION X. OUTSIDE EMPLOYMENT**

### **10.1 Other Employment**

ADE employees may engage in extra employment outside of ADE if they desire. It is not permissible for a State employee to engage in private employment during the time he or she is scheduled to be working for the State. Further, it is unlawful for a State employee to engage in any occupation outside working hours in a manner or to an extent which constitutes a conflict of interest as defined in the law. Employees may not receive any income or material gain from outside sources for materials produced or services rendered while performing their jobs at ADE.

It should be noted, however, that employees are subject to dismissal for inadequate performance of their jobs. Anyone considering employment in addition to his or her job with the State should carefully consider whether such employment would make demands on his or her time and energies which would adversely affect job performance in the State job. This, of course, is a personal matter and requires the use of good judgment on the part of anyone considering such an arrangement.

### **10.2 Concurrent Employment by Two State Agencies**

Generally, state employees are prohibited from receiving a salary or other compensation from another or the same state agency unless the employee is approved to work in two positions concurrently. Concurrent employment is when an employee is approved to work in two legislatively authorized positions in state agencies.

ADE must submit a completed Concurrent Employment form to OPM requesting approval from the Chief Fiscal Officer of the State. Each agency commissioner must sign and certify the following:

1. The combined salary payments from the two agencies cannot exceed the larger maximum salary of the grade; and
2. The work performed for the other state agency (secondary employer) will not interfere with the employee's proper and required job duties (primary employer).

Annual, sick and holiday leave may be accrued in a secondary employment position proportionate to the hours worked in the secondary employment position.

An employee may not be on paid sick leave with one agency and be compensated for the same hours from the other agency.

A part-time or job-share public defender is not prohibited from receiving compensation from an appellate court for work performed in connection with an indigent client's appeal to the Supreme Court or Court of Appeals.

### **Income Disclosure**

All state employees who work concurrent employment are required to disclose each source of income greater than \$500 earned during a calendar year from sources other than their regular salary from employment rendered for any agency.

The disclosure must be made on or before January 31 of each year with the Secretary of State.

### **Institutions**

A state employee may work for a state agency and institution concurrently, provided that a request is made by the agency or institution to the Commissioner of the Department of Higher Education, not the Chief Fiscal Officer of the State. Generally, the combined salary payments must not exceed the larger

maximum salary of the grade; however, a state employee may teach temporarily at a state supported institution of higher education and be compensated in an amount that exceeds the larger maximum annual salary. For more information about concurrent employment with an institution, see A.C.A. § 6-63-307 or contact the Department of Higher Education.

### **Outside Employment**

An employee may be authorized to work for a non-state employer in addition to the state agency provided the employee receives approval from his or her supervisor and the outside employment is not otherwise prohibited by law.

### **10.3 Disclosure of Income in Excess of Five Hundred Dollars**

Under Ark Code Ann. § 21-8-203, all state employees who are employed on a regular salary basis shall be required to disclose each source of income in excess of \$500 earned during any calendar year from sources other than their regular salary from employment or from professional or consultant services rendered for any public agency. The source and amount of income earned from other public agencies must be reported in an "Extra Income Statement" filed with the Secretary of State. Failure to file is a misdemeanor and may require disciplinary action, including but not limited, to possible suspension or termination of employment.

## SECTION XI - MISCELLANEOUS/OFFICE PROCEDURES

### 11.1 Maintenance of Equipment and Vehicles

When using ADE property, employees are expected to perform required maintenance and to follow all operating instructions, safety standards and guidelines. Please notify the Assistant Commissioner of Fiscal and Administrative Services promptly if any office equipment or vehicles appear to be damaged, defective or in need of repairs. ADE equipment and vehicles are to be used only for authorized ADE functions.

### 11.2 Mail Procedures

#### 1. U.S. Mail

All outgoing U.S. mail must be submitted to Central Services by 2:00 p.m. in order for it to be postmarked that day. Outgoing personal mail should be placed in the building mail slots or United State Postal Service mail boxes, not in outgoing office mail.

#### 2. Messenger Mail

Correspondence to state agencies or any other party on a State Message Service route should be sent by state messenger, thereby avoiding charges for postage.

There is a messenger box at the reception area on the first floor.

#### 3. Overnight Mail

Correspondence that has to arrive at its final destination by the next day may be sent by overnight mail with any of the current ADE vendors. Because of the additional cost, this method of delivery is only to be used in exceptional circumstances and only after receiving required approval.

### 11.3 Solicitation

In an effort to assure a productive and harmonious work environment, solicitation of or by ADE employees will be permitted only with the approval of the Commissioner of Education and **only before or after working hours**.

At the present time, only "not for profit" items are approved by the Commissioner of Education for solicitation. At no time is "for profit" solicitation allowed on ADE facilities.

ADE recognizes that employees may have interests in events and organizations outside the workplace. However, employees may not solicit or distribute literature concerning these activities during work time. (Work time does not include lunch periods, work breaks or any other periods in which employees are not on duty.)

### 11.4 Use of Computers/Expectation of Privacy

All business equipment, software, computer systems, electronic systems and all information stored, transmitted, received, initiated, or contained in ADE's information system are the property of ADE. Use of ADE's electronic systems shall not be conducted in such a way to interfere with job functions. No ADE employee has any expectation of privacy regarding use, storage, transmittal, or transfer of data on ADE equipment or property; including but not limited to computer systems, electronic devices, cell- telephones, software systems and other ADE equipment or property.

### 11.5 Internet/Electronic Mail and Software Policy

ADE employees may utilize ADE Internet and email for limited personal use as long the use does not interfere with the employees' job functions. Employees should keep in mind that ADE monitors each employee's Internet and email use. Supervisors have the discretion to further limit Internet and email use, as necessary.

## **11.6 ADE Internet Acceptable Use Policy**

### **Introduction**

The Arkansas Department of Education (ADE) provides its staff with technology resources and a local area network with access to the Internet. The purpose of these technologies is to: a) enhance the programs and services provided by ADE, b) conduct ADE business, c) support ADE projects, and d) ensure that staff are equipped with the necessary tools for communication, research, collaboration, and other tasks required to fulfill job obligations. Each staff member is expected to use accounts and resources for these purposes.

- Currently, each ADE staff member has been provided adequate resources for Internet connectivity. The staff relies on this connectivity in order to adequately perform their job duties and responsibilities.
- The ADE provides approximately 409 (as of 06/27/2016) employees access to a networked computer. This represents 100 % of the employees in the ADE.
- All ADE staff must carefully review and adhere to these Internet acceptable use guidelines.

## **11.7 Appropriate Use of Technology**

### **Technology as a required resource and privilege**

Appropriate uses of technology include:

- Accessing the Internet for work related research and information gathering;
- Utility and applications software that accomplish tasks and fulfill job functions;
- Communication and collaboration between staff and/or other appropriate entities;
- Access to the Internet for up-to-date information published by ADE, other state agencies, and various other providers of information that may be necessary in order to complete job tasks;
- Activities or projects that support professional activities of employees (i.e., electronic calendars, electronic scheduling of meetings, electronic prioritizing of tasks, using project management software, keeping electronic address books, and completion of work related forms electronically) 2 Effective June 30, 2016

### **Privacy of Information**

The ADE reserves the right to monitor and/or log all network activity with or without notice, including e-mail and all web site communications, and therefore, users should have no expectation of privacy in the use of these resources.

- The ADE will not monitor e-mail transmissions on a regular basis, though the construction, repair, operations and maintenance of electronic messaging systems may occasionally result in monitoring random transmitted or stored messages.
- Messages may be monitored during the course of investigations of illegal activity.
- The ADE will not provide third parties with access to stored electronic messages without the written consent of the sender and recipient except in special circumstances, such as investigating illegal activity or misuse of the system, or resolving a technical problem.

## **Governor's Policy Directive**

Governor's Policy Directive GPD-5, 1997 clearly states that... "Use of any and all State-owned equipment and supplies shall be restricted to official state use only. Unauthorized or personal use of equipment or supplies may be grounds for dismissal."

## **User Restrictions**

The ADE staff will not excessively use the ADE network, computer systems, and servers including access to the use of the Internet and other information resources during regular office hours for non-ADE business. Limited personal use of these resources is allowed during breaks and lunch time, or to address critical personal matters.

## **Unacceptable Uses**

The following general uses are prohibited:

- Interference with the security or operation of the computer systems;
- Vandalizing equipment, software, or hardware;
- Attempting to alter or gain access to unauthorized files or systems;
- Using technology in a way that interferes with work obligations;
- Violating the rights of others by publishing or displaying any information that is defamatory, obscene, known to be inaccurate or false, profane, or threatening.
- It is unacceptable for a user to use, submit, publish, display, or transmit on the network or on any computer system any information which:
- Violates or infringes on the rights of any other person, including the right to privacy;
- Contains defamatory, false, inaccurate, abusive, obscene, pornographic, profane, sexually oriented, threatening, racially offensive, or otherwise biased, discriminatory, or illegal material;
- Inhibits other users from using the system or the efficiency of the computer systems;
- Encourages the use of controlled substances or uses the system for the purpose of criminal intent;
- Uses the system for any other illegal purpose.

It is also unacceptable for a user to use the facilities and capabilities of the system to:

- Knowingly transmit material, information, or software in violation of any local, state or federal law;
- Conduct any non-governmental-related fund raising or public relations activities;
- Engage in any activity for personal financial gain, such as buying or selling of commodities or services with a profit motive;
- View, download or send pornographic or other obscene materials;
- Visit and/or participate in chat rooms not designed for professional interactions specifically related to one's job;
- Endanger productivity of ADE.

## **11.8 Electronic Mail (E-mail)**

E-mail is considered network activity and as such is subject to all policies regarding acceptable/unacceptable uses of the Internet. The user should not consider e-mail to be either private or secure.

## **Purpose of E-mail**

Electronic mail is provided to support open communication and the exchange of information between staff and other authorized users that have access to a network. This communication allows for the collaboration of ideas and the sharing of information. E-mail is a necessary component of teamwork at ADE.

## **E-mail Guidelines**

Each ADE staff member is given an E-mail account. It is the responsibility of the employee to use their account in accordance with established guidelines and in such a way that does not interfere with their duties.

Specifically prohibited in the use of e-mail is:

- Any activity covered by inappropriate use statements included in this policy;
- Sending / forwarding chain letters, virus, hoaxes, etc.;
- Sending, forwarding or opening executable files (.exe) or other attachments unrelated to specific work activities, as these frequently contain viruses;
- Use of abusive or profane language in messages;
- Submitting any large, unnecessary mail attachments;
- Use that reflects non-professional image of ADE.

## **E-mail Storage**

Staff should move important information from E-mail message files to shared folders and drives to ensure proper backup. Messages no longer needed must be periodically purged from personal storage areas. Technical support staff will monitor storage usage and advise when limits are reached and purging is required.

## **11.9 Internet**

### **Purpose of Internet Access**

The Internet provides a wealth of information useful for educational purposes. With Internet access an employee of ADE can utilize the many research and resource tools available online. These tools can aid in preparing reports or projects required by the agency.

All ADE staff members may access the Internet and other information resources and services at any time that in the judgement of the user, such access and use will benefit ADE programs and services.

### **Internet Access Guidelines**

When online, employees should abide by conventional etiquette guidelines developed for the Internet ('netiquette').

### **Appropriate Use of Web Access**

Employees are responsible for making sure they use this access correctly and wisely. Staff should not allow Internet use to interfere with their job duties.

Acceptable uses include:

- Access to and distribution of information that is in direct support of the business of the ADE.
- Providing and simplifying communications with other state agencies, school districts and citizens of Arkansas;



Communication of information related to professional development or to remain current on:

- Topics of General ADE interest;
- Announcement of new laws, rules, or regulations;
- Encouraging collaborative projects and sharing of resources.

Inappropriate uses of web access include, but are not limited to:

- Viewing, downloading or sending pornographic or other obscene materials;
- “Surfing” the Web for inordinate amounts of time;
- Otherwise endangering productivity of ADE.
- Purposes which violates a Federal or Arkansas law;
- Dissemination or printing copyrighted materials (including articles and software) in violation of copyright laws.

#### **11.10. Appropriate Network Use and User Accounts Guidelines**

Use of the state’s Internet connection and E-mail resources is a privilege and it is expected that all staff abide by acceptable user guidelines. Appropriate network and user account guidelines include:

- ADE staff will only access those computer accounts which have been authorized for their use and must identify computing work with their own names or other approved IDs so that responsibility for the work can be determined and users can be contacted in unusual situations.
- ADE staff will use accounts for authorized purposes. This policy shall not prevent:
- Informal communication, but accounts will not be used for private consulting or personal gain.
- Network administrators may review files and communications to maintain system integrity and ensure that users are using the system responsibly. Staff should not expect files and documents to always remain private.
- Users are encouraged to maximize the use of the technologies covered under this user policy to reduce the cost of postage, letters, reports, etc.

#### **11.11 Copyright Guidelines**

##### **Purpose of Software Availability**

ADE provides utility and application software that enhances the efficiency and productivity of its employees. ADE staff must honor copyright laws regarding protected commercial software used at the ADE.

##### **Compliance with Copyright Laws**

- Copyright laws do not allow a person to store copies of a program on multiple machines, distribute copies to others via disks or Internet, or to alter the content of the software, unless permission has been granted under the license agreement.
- Users may download copyrighted material, but its use must be strictly within the agreement as posted by the author or current copyright law.
- Unauthorized use of copyrighted materials or another person’s original writing is considered copyright infringement.
- Any user that copies and distributes software in any form for any purpose should do so only on the authority of the user’s immediate supervisor.
- Each user is responsible for observing all local, state, federal laws, especially in regard to copyright laws. The ADE will not be responsible for the cost of any legal action taken against any user that violates such laws regardless of the situation or the intent or purpose of the user.
- All staff that use software owned by the ADE or the state must abide by the

- Limitations included in the copyright and license agreements entered into with software providers.

## **Enforcement and Penalties**

The ADE staff is responsible for complying with this policy. Penalties for non-compliance include, but are not limited to:

- Suspension or usage restrictions of Internet service and email/messaging services.
- Internal disciplinary measures, including discharge.
- Initiation of criminal or civil action, if appropriate.

## **Recording Policy**

ADE employees are prohibited from recording any wire, landline, oral, telephonic, or wireless communication that deals with ADE official business and/or workplace issues without the prior written approval of the employee's immediate supervisor or the Division Assistant Commissioner.

This policy does not prohibit or require prior approval of the recording of official meetings, hearings, or investigations which are required to be recorded either by law or ADE Policy or Rules and Regulations.

This policy does not require the Commissioner of Communications, or his or her designee, to obtain prior approval for recording communications as part of his/her official capacity.

## **11.12 Security Procedures**

ADE requires all managers, supervisors and employees to be knowledgeable of workplace violence and to take steps to identify and report all indications of early symptoms of workplace violence.

Workplace violence is any threatened or actual conduct by an individual against persons or property that is sufficiently severe, offensive, or intimidating so as to alter the conditions of state employment, or to create a hostile, abusive, or intimidating work environment for one or more ADE employees.

Behavior constituting threats or acts of violence can include any expression that communicates a direct or indirect threat of physical harm.

1. It is the policy of ADE to comply with all applicable federal, state and local health and safety regulations and to provide a work environment as free as feasible from recognized hazards.
2. ADE monitors the daily activities of employees and visitors and is ready to respond to emergency situations should they arise.
3. ADE does not tolerate behavior that:
  - a. Is violent,
  - b. Threatens violence,
  - a. Harasses or intimidates others,
  - b. Interferes with an individual's legal rights, movement or expression,
  - c. Disrupts the workplace, or ADE's ability to provide service to the public.
4. Violent or threatening behavior can include physical acts, oral or written statements, gestures and expressions.

5. An employee should report any incidents of violent, threatening, harassing or intimidating behavior in the workplace to immediate supervisor, regardless of whether those involved are ADE employees or not.
6. Supervisors who receive reports of violent or threatening behavior must notify the appropriate Division Assistant Commissioner and the Human Resources Office. The Human Resources Office will assist supervisors in their response to allegations of such behavior.
7. Employees may not possess, use, or store weapons in any of ADE's buildings, in areas controlled by ADE including state owned vehicles or on any state grounds. Weapons covered by this policy include, but are not limited to: firearms, firearm ammunition, air pistols, air rifles, fireworks, incendiary devices, lock blade or fixed blade knives with a blade length of four inches or greater, blackjacks, metal knuckles or any other such weapons of any description. Employees may possess chemical-agent-type products in personal use quantities for self-defense, but the employee may not use them for purposes other than self-defense.
8. If the employee is uncomfortable with a current or potential situation, the employee should contact the Capitol Police (501-682-5173). In cases of physical assault or direct threats of harm to people or property, call 911.
9. Authorized visitors will receive directions or be escorted to their destination. Employees are responsible for the conduct and safety of their visitors. It is mandatory that all visitors shall sign the "Visitor's Log" book on entry and exit.
10. Furthermore, in an effort to strengthen security in ADE, video cameras have been installed near all the building entrances and on the loading dock area. The cameras will be recording 24 hours a day.
11. For more information concerning ADE's Building Security Procedures see ADE's Maintenance Coordinator, 501.682.4266.

#### **11.13 Freedom of Information Act Request (FOIA)**

1. Examination and copying of public records is a matter of public policy in ADE. All public records shall be open to inspection and copying by any citizen of the state of Arkansas during regular business hours as provided by law. The FOIA will be complied with to the fullest extent of the law. A copy of any request for records maintained by ADE shall be forwarded to the General Counsel or his designee for appropriate action.
2. Viewing Personnel Files - An official record of the employee's work and employment history is maintained in ADE's Human Resources Office. The employee may view personnel file at any time. As a state employee, some information pertaining to employment at the ADE is open to public disclosure upon written request. While most items must be disclosed under the Arkansas FOIA, ADE Human Resources Office will attempt to notify the employee if information concerning employment is requested.

#### **11.14 Visitors in the Workplace**

To provide for the safety and security of employees at ADE, individual division or unit, supervisors may impose restrictions on visitors in the workplace which are appropriate for the successful operation of that division or unit.

Authorized visitors will receive directions or be escorted to their destination. Employees are responsible for the conduct and safety of their visitors. It is mandatory that all visitors shall sign the "Visitor's Log" book on entry and exit.

The work site is not a substitute for a day care center. Employees are responsible for arranging alternative day care or using annual leave, sick leave or leave without pay, as appropriate.

If an unauthorized individual is observed on the premise of ADE, employees should immediately notify their supervisor or the Central Services Unit, 501-682-4266 or, if necessary, direct the individual to the main entrance.

## **11.15 ADE Building Security Procedures**

### **A. DEPARTMENT-WIDE PROCEDURES**

#### **SECURITY OF EXTERIOR DOORS**

- Do not *prop* any exterior doors open.
- Do not allow access to any person through a secure door without an ADE ID badge or contractor's temporary ID badge issued by ADE.
- When the building is closed for any reason, it is the responsibility of Central Support Services to ensure exterior doors are locked.

#### **KEYS**

- If access into your area requires a key card/badge, keep the doors closed at all times.
- Lending keys or keycards is discouraged.
- Under no circumstances may an ADE employee lend an ADE key or key card to any person not an employee of ADE.
- Report lost keys or key cards to Central Support Services within 24 hours of realizing the loss.

#### **IDENTIFICATION BADGES**

- ADE employees are required to wear their ADE identification badges visibly at all time while in ADE facilities.
- After signing in, visitors receive a visitor badge, which they must wear visibly clipped to their clothing at all times, while in the building. Visitor badges must be returned when the visitor signs out
- Employees of other state agencies must wear a visitor badge.

#### **ACCESS ROSTERS**

- The Special Projects Manager will create and maintain a "No Escort Required" Roster and a Non-Access Roster.
  - The "No Escort Required"; roster will include non-ADE employees who are allowed unescorted access to the Arch Ford Building. Assistant commissioners over units located in other buildings must approve the "No Escort Required" rosters for those buildings.
  - The Non-Access Roster will include persons who are not to be allowed into any ADE facility.
  - Both rosters will include the name and (when possible) a picture of the person assigned to the roster.
- The following person will have editing rights to the two rosters: the Secretary of Education or his designee, Deputy Commissioner or his designee, and Assistant Commissioner for Fiscal and Administrative Services or his designee.
- The following persons will have Viewing rights to the rosters: all assistant commissioners, the department general counsel, the director of communications, the front receptionists, and the director of central support services.

- Additions to or deletions from the rosters require approval by the Secretary of Education, Deputy Commissioner, Chief of Staff; or any assistant commissioner.

## **B. ARCH FORD BUILDING PROCEDURES VISITORS**

- All non-ADE employees must report to the front desk to sign in.
- After signing in, ALL visitors must remain in the lobby area until an escort arrives.
- **Visitors must be escorted at all times while in the building.** The unit being visited is responsible for ensuring the visitor is escorted to and from the front desk.
- Visitors must return to the front desk to sign out and return the visitor's badge. ADE staff are not allowed to escort visitors to other doors to exit or to sign out for a visitor.
- Do not allow "tailgating" or "piggybacking".
  - Tailgating occurs when an unauthorized person enters a secure area by following closely behind an authorized cardholder.
  - Piggybacking occurs when an authorized person gains access to a secure area and allows unauthorized persons to follow - by holding open a secured door, for example.
- If you sight an unescorted visitor, ask the person politely if you can help him/her. Assist the visitor in reaching the unit he/she wishes to visit. If the visitor seems suspicious or tries to evade you, call any of the building marshals immediately. A roster of building marshals with contact information is available on the employee intranet.

## **DELIVERIES**

- Delivery personnel may be admitted through the loading dock area doors.
- Delivery personnel arriving at the loading dock area may be allowed in remotely by the front desk only if no employee from Central Support Services is on hand to admit them.
- Delivery personnel are not required to sign in but must leave deliveries in the dock/maintenance areas.
- Delivery personnel are not permitted further access to the building without an escort provided by the unit receiving the delivery.
- Deliveries of a personal nature are to be brought to the front desk; the deliverer must leave the delivery at the front desk. The deliverer may take the item to the recipient only after signing in, receiving a visitor badge, and being escorted by an employee from the floor where the delivery is to be made.

## **CONTRACTORS**

- Contractors may be admitted only through the loading dock area door unless they have they have been issued an access badge by Central Support. All other contractors must be admitted only through either the loading dock area or the main front door.
- Central Support Services will maintain a list of contractors that regularly perform work in the building. A copy of the roster is to be provided to the front desk.
- Contractors are allowed access to the building for purposes of their work if;
  - The contractor is wearing the uniform or shirt of his/her employer or
  - The contractor has picture identification provided by his/her employer.
- Contractors who do not meet one of the above conditions must sign in at the front desk and receive a visitor's badge. The contractor will then be escorted to the work location by an employee from the floor where the work is to be done.
- When possible, the Director of Central Support Services will send an agency-wide e-mail to notify ADE staff of contractors scheduled to be in the building.

## **SECURITY OF FIRST FLOOR HALLWAY DOUBLE DOORS**

- The locked double doors in the first floor hallway are to remain closed and locked at all times.
- Do not prop open the locked double doors in the first floor hallway.
- Do not allow any non-ADE employee through the double doors unless he or she is escorted by an ADE employee.
- The doors can be opened remotely from the front desk; however, the remote access is to be used only for persons on the No Escort Required roster.

## **SPECIAL PROCEDURES FOR STATE BOARD MEETING DAYS**

- Visitors must be allowed access to attend meetings of the State Board of Education and other meetings of public policy-making bodies.
- During such meetings, the double doors in the first floor east hallway ("A" wing) will be propped open beginning 30 minutes before the meeting begins in order to allow visitors to have access to overflow rooms. The doors will be closed 30 minutes after the meeting concludes.
- An ADE staff member will be assigned to monitor the first floor east hallway ("A" wing) and the overflow rooms. The monitors will be assigned to each division on a rotating basis as determined by the commissioner or his designee.

### **11.16 Children in the Workplace**

This Policy sets out the Arkansas Department of Education (ADE) guidelines regarding the bringing of children into the workplace. ADE understands that some employees may have a responsibility to care for children. ADE makes every effort to provide a family-friendly environment for its staff and encourages children to participate in family- and youth-oriented programs in ADE. ADE understands that brief and infrequent visits by children of staff occur for a variety of reasons (such as ADE events, entertainment, and other activities). While it is not the policy to restrict visits by children for such activities, the frequent, regular or extended presence of children during work hours is not permitted due to

- i. the potential for interruption of work;
- ii. health and safety concerns; and
- iii. liability to ADE.

ADE's employment policies and benefits strive to help employees balance work and family responsibilities. When schedules allow, ADE encourages supervisors to be flexible in granting accrued leave to employees who need to address family matters. Offices, work spaces, however, are not designed with the safety and well-being of children in mind. Thus, it is not appropriate to bring children to work in lieu of making childcare arrangements.

#### **Guidelines:**

1. Bringing children (those persons under the age of 18 years) to work is not to be an alternative to childcare. Bringing a child to the workplace on a regular and recurrent basis is not appropriate.
2. The presence of a child cannot interrupt or disrupt the workplace, or negatively affect the employee, or staff.
3. Children may not be present at any time in areas of machinery or in an area that is potentially hazardous.
4. Any employee bringing a child to the workplace should notify and receive the approval of his/her supervisor. At all times, children remain the sole responsibility of the parent. The employee (parent) shall not ask any other, employee or person to supervise the child.
5. The employee's supervisor may ask the employee to remove the child from the workplace at any time the supervisor determines that the child's presence is disruptive or interferes with the work performed, or there are health or safety risks.

6. Any child with an illness that prevents the child from going to a child care facility or from attending school should not be brought to the workplace. No child with an infectious disease should be brought to the workplace under any circumstances.
7. These guidelines do not prohibit children from participating in ADE-sponsored events or programs that are intended for children.
8. If children are in the building or on the premises, they should be accompanied by the employee (parent) at all times.

### **11.17 Immunity from Suit**

Ark. Code Ann § 19-10-305 clarifies that officers and employees of the State of Arkansas, within proper job functions and duties, are immune from liability and from suit, except to the extent that they may be covered by liability insurance, for damages or acts of omissions, other than malicious acts or omissions, occurring within the course and scope of their employment.

### **Legal Assistance and Professional Liability**

The Arkansas Attorney General's Office will represent the employee if the employee is sued in his/her "official capacity". An "official capacity" claim against the employee is a claim against the office or position the employee holds or held at the time of the event in question. The claim would be considered as a claim against the State of Arkansas and therefore, cannot result in any personal judgment against the employee that would be satisfied by any of their personal assets. Neither ADE nor the state of Arkansas will provide legal assistance in personal matters or matters that do not pertain to the employee's job duties during the employee's work hours.

If the employee is involved in a job-related legal matter, the employees are required to fully cooperate with ADE legal counsel and others as required.

### **Forfeiture of or Disqualification from Public Employment**

ADE, as authorized by Ark. Code Ann. § 25-16-1101, with the intent to promote integrity in public employment, requires that a public servant who pleads guilty to or nolo contendere to or is found guilty of any felony offense relating to his or her office, position, or employment to forfeit his or her office, position, or employment and thereafter he or she is disqualified from holding any office, position, or employment with a governmental body.

### **11.18 Required Policies and Acknowledgments**

The employee will be asked to sign forms acknowledging awareness of various ADE policies. Some of these policies will be covered in detail during orientation and the employee will be required to sign acknowledging that he or she has reviewed and understands them. All agency policies undergo routine review and updating. Employees are required to stay up-to-date with relevant policies and procedures. These documents are on ADE Intranet Site at <https://adeemployees.arkansas.gov/Pages/>

### **11.19 Anti-Fraud Policy**

The purpose of this policy is to implement systems and procedures that aid in the prevention of fraud and support the Arkansas Department of Education's culture and environment of honesty and ethical behavior. (The word "fraud" is used extensively throughout the Anti-Fraud and Code of Ethics Policy. Fraud as used in these documents is not intended to meet the legal definition of fraud. The use of "fraud" in these documents refers to the deliberate misuse or misapplication of state resources or assets for personal gain.) This policy is consistent with [R1-19-4-505](#) of the Arkansas Financial Management Guide.

### **Policy**

In order to promote a culture of honesty and ethical behavior within the Arkansas Department of Education (ADE), the following procedures are mandated:

### **Code of Ethics**

Within 30 days of the date of this policy, the ADE Management Team will distribute a copy of ADE's Code of Ethics to each employee within its administration. Administrators are required to explicitly discuss ADE's requirement that employees report conduct or transactions that violate ethical provisions or are fraudulent and the options of how to communicate these matters. To verify that employees have received a copy of the Code of Ethics, employees must sign and date the last page. The original signed page from the Code of Ethics is required to be maintained in the employees' personnel files maintained by the ADE Human Resources Office. Employees shall be provided a copy for their records.

The ADE Human Resources Office shall create procedures to include an introduction to the Code of Ethics in new employee orientation sessions within 30 days of implementation of this policy. All employees receiving orientation shall sign and date the last page signifying that they have been provided a copy of the Code of Ethics.

During their annual performance evaluation, employees must reaffirm that they have been made aware of the Code of Ethics by signing a Code of Ethics Annual Acknowledgement Statement. This statement shall be included with each employee's performance evaluation that is sent to the ADE Human Resources Office upon completion of the evaluation.

The ADE Code of Ethics is included as part of this policy as Attachment A.

The ADE Code of Ethics Annual Acknowledgement Statement is included as part of this policy as Attachment B.

### **Investigations of Fraud**

The ADE is committed to a thorough investigation and shall conduct an internal investigation of all complaints of occurrences of alleged ethical violations, fraud, waste and abuse brought to its attention. In accordance with the Arkansas Financial Management Guide, the Department of Finance and Administration (DFA) Office of Accounting's Internal Audit Section will be responsible for coordinating all investigations. This responsibility is in accordance with Governor's [Executive Order 04-04](#). The DFA Internal Audit Section is authorized to request assistance from ADE employees that have the experience required to assist or perform such investigations. Investigations will be conducted in a confidential manner. If investigations indicate that a loss of state funds has occurred, then the amount of loss shall be reported to the Division of Legislative Audit in accordance with Section [R1-19-4-2004](#) of the Arkansas Financial Management Guide. In addition, any loss of state funds involving criminal activity shall be reported to the Arkansas State Police for a criminal investigation.

ADE employees shall be protected against any form of retaliation, including discharge, for reporting in good faith occurrences of ethical violations, fraud, waste and abuse of government resources as stated in the Arkansas Whistleblower Act ([ACA 21-1-601 – 609](#)).

Allegations of ethical violations or fraud may be reported to the Arkansas State Employees' Fraud, Waste, and Abuse Report Center (1-800-952-8248) or to the DFA Office of Accounting - Internal Audit Section by telephone (501-682-0370). An employee may also choose to report ethical violations, fraud, waste or abuse by completing a Complaint Form, included as Attachment C to this policy. Complaint forms may be mailed directly to the ADE Human Resources Manager, Ms. Clemetta Hood, or to the ADE Controller, Mr. Greg Bomar, at the following address: #4 Capitol Mall, Little Rock, AR 72201, or to the DFA Internal Audit Section at the following address:



Department of Finance and Administration  
Office of Accounting/Internal Audit Section  
1515 West 7th Street, Room 215  
Little Rock, AR 72201

### **Evaluation of Anti-Fraud Processes and Controls**

In accordance with Section [R1-19-4-505](#) of the Arkansas Financial Management Guide, ADE will reduce fraud opportunities by

1. identifying fraud risks,
2. mitigating fraud risks and
3. implementing preventive and detective internal controls.

The identification of fraud risks will be conducted through ADE-wide fraud risk assessment every two years. The initial agency-wide risk assessment will be completed by December 31, 2005, and every two years thereafter. ADE management will implement appropriate internal controls and change business processes when feasible to reduce fraud risks.

The DFA Office of Accounting's Internal Audit Section shall review the internal controls and changes made to business processes to determine if the control activities identified in the risk assessment are properly designed to mitigate the risk of fraud, waste and abuse of resources. This shall specifically include the internal control activities that are designed to prevent or detect fraud.

## **ATTACHMENT A**

# **ARKANSAS DEPARTMENT OF EDUCATION**

## **Code of Ethics**

The Arkansas Department of Education (ADE) Code of Ethics (Code) is the written document that supports the culture of ethical and efficient service to the citizens of the State provided by this department. The Code describes the behavior expected of employees that perform these services.

### **ADE - Code of Ethics**

Employees of the ADE must comply with all applicable laws and regulations. The ADE will not condone employee conduct that either violates, or has the appearance of violating the law, including the ethical provisions. This includes receiving payments for illegal acts, indirect contributions, rebates or bribery.

If an employee is uncertain about the application or interpretation of any legal or procedural requirement, the employee shall ask for guidance from his or her immediate supervisor.

### **Conflicts of Interest**

Employees of the ADE must perform their duties in an ethical manner. Employees must not use their position or knowledge gained from their position for private or personal advantage. [Arkansas Code Annotated \(ACA\) §21-8-304](#) lists certain activities that are ethically prohibited activities for state employees and officials. If an employee becomes involved in a situation that could be considered a prohibited activity, the employee shall immediately communicate all the facts to his or her immediate supervisor.

### **Outside Activities, Employment, and Commissionerships**

Employees of the ADE shall avoid acquiring any business interest, engaging in outside employment or participating in any activity outside ADE that would conflict with his or her official duties.

### **Relationships with Clients and Suppliers**

Employees must adhere to [ACA §19-11-705](#) in their relationships with clients and suppliers to avoid any conflict of interest. In addition, any employee who has or obtains any benefit from a state contract with a business in which the employee has a financial interest shall make a disclosure to the Commissioner of the Department of Finance and Administration (DFA) in accordance with [ACA §19-11-706](#) and the Rules and Regulations for Implementing Governor's [Executive Order 98-04](#).

### **Gifts, Entertainment, and Favors**

Employees must not accept entertainment, gifts, personal favors or preferential treatment that could influence, or appear to influence, their decisions in performing their job functions. Specific procurement law addressing gratuities is codified in [ACA §19-11-707](#) and included in the Procurement Law and Regulations promulgated by the Office of State Procurement.

Refer to Rules and Gifts issued by the Arkansas Ethics Commission for detailed rules on gifts at: [http://www.arkansasethics.com/rules/Rules\\_on\\_Gifts.doc](http://www.arkansasethics.com/rules/Rules_on_Gifts.doc).

## **Kickbacks and Prohibited Commissions**

Employees of the ADE must not receive kickbacks, prohibited commissions or other prohibited payments from third parties. Violations of this rule will result in imposition of the penalties provided by law. Specific procurement law addressing kickbacks and commissions is codified in [ACA §19-11-707](#) and [§19-11-708](#) and included in the Procurement Law and Regulations promulgated by the Office of State Procurement.

## **Organization Funds and Other Assets**

Employees who have access to ADE funds in any form must follow the prescribed procedures for recording, handling, and protecting money as detailed in DFA's Financial Management Guide, other explanatory materials, or both. If an employee has knowledge of fraud or waste of public assets, the employee shall immediately advise his or her immediate supervisor. Personal use of ADE funds or assets is strictly forbidden.

## **Organization Records and Communications**

The ADE's books and records must reflect accurate and timely recording of all business transactions. Full disclosure of assets, liabilities, receipts and disbursements must be made.

Employees must not make or engage in any false record or communication whether internal or external, including but not limited to:

- False expense, attendance, production, financial, or similar reports and statements
- False advertising, deceptive marketing practices, or other misleading representations

## **Dealing With Outside People and Organizations**

Employees must not use their position or affiliation with the ADE when communicating regarding matters not involving ADE business. Employees must not use organization identification, stationery, supplies or equipment for personal or political matters.

When communicating publicly on matters that involve ADE business, employees must not speak for the ADE on any topic, unless they are certain that the views they express are those of ADE management, and that it is the ADE management's desire that such views be expressed publicly.

ADE personnel shall coordinate public communication matters with the ADE Commissioner of Communications unless direct communication in a public forum is unavoidable. The ADE Commissioner of Communications is the official spokesperson for the ADE for issues to be communicated to the public.

When dealing with anyone outside ADE, including public officials, employees must take care not to compromise the integrity or damage the reputation of the ADE or any other entity.

## **Prompt Communications**

Employees of the ADE shall respond promptly and accurately to all legitimate requests for information and complaints, regardless of the source, in accordance with privacy laws. Employees with questions regarding whether a request is legitimate, or whether it is permissible to release certain types of information, shall ask their supervisor or the ADE Commissioner of Communications. (See the Privacy and Confidentiality Section below.)

## Privacy and Confidentiality

When handling financial and personal information about customers or others with whom the ADE has dealings, observe the following principles:

1. Collect, use, and retain only the personal information necessary for ADE business. Whenever possible, obtain any relevant information directly from the person concerned. Use only reputable and reliable sources to supplement this information.
2. Retain information only for as long as necessary or as required by law. Protect the physical security of this information.
3. Limit internal access to personal information to those with a legitimate business reason to have the information. Use personal information only for the legitimate business purpose for which it was obtained. Release of any information to persons not involved with the stated business purpose shall be made by management in response to a Freedom of Information Act request. Any tax information that is confidential pursuant to [ACA § 26-18-303](#) shall not be disclosed, except as allowed by law.

## Reporting Suspected Fraud

Employees of the ADE have a responsibility to report occurrences of ethical violations, fraud, waste or abuse of ADE resources that can be verified through investigation. Employees of the ADE shall be protected against any form of retaliation, including discharge, for reporting, **in good faith**, occurrences of ethical violations, fraud, waste or abuse of ADE resources as stated in the Arkansas Whistleblower Act ([ACA §21-1-601-609](#)). Investigations to substantiate reported allegations will be conducted in a confidential manner.

Allegations of ethical violations or fraud are to be reported in the following manner:

1. Internal reporting may be handled through either the ADE Human Resources Manager, Ms. Clemetta Hood (501-682-4209) or the ADE's Controller, Mr. Greg Bomar at (501-683-4740). See Attachment C for a Complaint Form.
2. Employees also have the option of reporting allegations and directly to the Arkansas State Employees' Fraud, Waste, and Abuse Report Center (1-800-952-8248) or to the Office of Accounting - Internal Audit Section by telephone (501-682-0370). This may be done anonymously if that is the employee's preference.
3. A complainant may also choose to report fraud, waste or abuse by completing a DFA Internal Audit Complaint Form obtained at the following web site: [DFA | Office of Accounting | Internal Audit | Fraud Reporting](#).
4. Complaint forms can be mailed directly to the Office of Accounting - Internal Audit Section at the following address:

Department of Finance and Administration  
Office of Accounting - Internal Audit Section  
1515 West 7<sup>th</sup> Street, Room 215  
Little Rock, AR 72201

My signature on this document indicates that I have read and fully understand the prohibited activities and my responsibilities to the ADE as listed in this code of ethics.

**Printed Name** \_\_\_\_\_ **Date** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Office** \_\_\_\_\_

## **ATTACHMENT B**

# **DEPARTMENT OF EDUCATION - CODE OF ETHICS ANNUAL ACKNOWLEDGEMENT STATEMENT**

My supervisor/manager and I have reviewed and discussed the Arkansas Department of Education (ADE) – Code of Ethics. I understand that my signature on this document indicates that I have read and fully understand the prohibited activities and my professional and ethical responsibilities as an employee of the ADE, as described in the ADE - Code of Ethics.

Employee signature \_\_\_\_\_ Date \_\_\_\_\_

Supervisor/Manager signature \_\_\_\_\_ Date \_\_\_\_\_

***Note to Supervisor/Manager:*** The review and discussion of the ADE – Code of Ethics is an annual requirement. This signed document shall be submitted to the ADE Human Resources Office along with the employee’s annual performance evaluation.

## ATTACHMENT C

### COMPLAINT FORM

#### Arkansas Department of Education

For Internal Use Only	
RECEIVED: DATE	
RECEIVED: TIME	
DETAILS OF SUBJECT	

#### COMPLAINANT: (Optional)

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

HOME TELEPHONE # \_\_\_\_\_

EMPLOYMENT AGENCY /LOCATION WORK TELEPHONE # \_\_\_\_\_

#### DETAILS OF COMPLAINT:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

For Internal Use Only	
RECEIVED BY	
ACTION TAKEN	

**Related Links:**

**Arkansas State Employees Association** [ASEA \(aseaar.org\)](http://aseaar.org)

**Arkansas State Employee Benefits** <http://www.arbenefits.org/>

**Arkansas Teacher Retirement** [Arkansas Teacher Retirement System | Arkansas.gov](http://arkansas.gov)

**Empowering Arkansas State Employees - EASE** [EASE Login \(arkansas.gov\)](http://arkansas.gov)

**OPM Policies and Procedures** [Policy - Arkansas Department of Transformation and Shared Services](http://arkansas.gov)