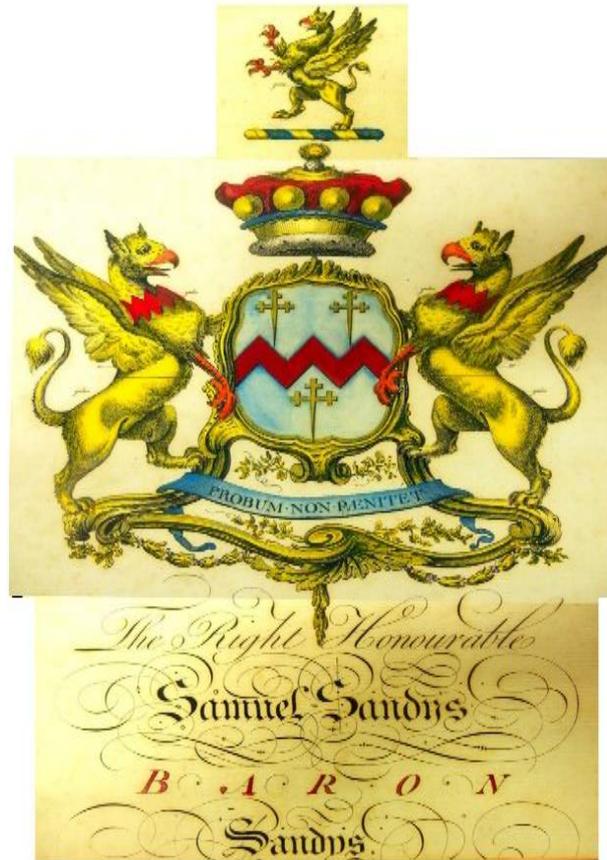


# TOWN OF SANDISFIELD, MASSACHUSETTS PERSONNEL POLICIES MANUAL



*The Right Honourable*  
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*B A R O N*  
*Sandys*

## TOWN OF SANDISFIELD EMPLOYEE MISSION STATEMENT

As employees of the Town of Sandisfield we continuously strive to provide exceptional municipal services. We take pride in the work we do and are committed to:

- Fostering a positive, friendly and professional atmosphere.
- Promoting respect and appreciation for all employees.
- Serving the public with integrity and efficiency.
- Anticipating future needs, setting goals and implementing strategies to meet them.

Through cooperation and team work, we can succeed in meeting these commitments.

**TOWN OF SANDISFIELD, MASSACHUSETTS  
PERSONNEL POLICIES MANUAL**

**TABLE OF CONTENTS  
October 19, 2016**

<u>Section</u>	<u>Page No.</u>
Introduction .....	3
Town Employee Mission Statement .....	3
I General Provisions .....	4
II Recruitment .....	5
III Appointment .....	6
IV. Classification Plan .....	6
V. Compensation .....	7
VI. Leave .....	8
A. Vacations .....	8
B. Sick Leave .....	9
C. Holidays .....	10
D. Personal Days .....	11
E. Family Illness/Bereavement Leave .....	11
F. Bonus Day .....	11
G. Family Medical Leave Act .....	11
H. Small Necessities Act .....	11
I. Jury Duty.....	11
J. Military Leave .....	12
K. Public Safety Service Leave .....	12
L. Leave of Absence .....	12
M. Absence Without Leave .....	13
N. Leave Upon Termination .....	13
VII. Workweek .....	14
VIII. Payday .....	14
IX. Lunch and Rest Breaks .....	14

X. Personal Data ..... 14

XI. Personnel Records ..... 14

XII. Benefits ..... 14

XIII. Travel ..... 15

XIV. Alcohol and Drug Testing for Drivers of Town Owned Vehicles ..... 16

XV. Americans with Disabilities Act .....16

XVI. Conduct and Discipline ..... 16

XVII. Termination.....19

XVIII. Safety.....20

XIX. Grievance Procedure.....20

XX. Severability.....21

Appendix A: Drug Free Policy

Appendix B: Family Medical Leave Act

Appendix C: Small Necessities Act

Appendix D: Massachusetts Maternity Leave Act

Appendix E: Sexual Harassment Policy/Discriminatory Harassment Policy

Appendix F: Whistleblower Policy

## **INTRODUCTION**

Being a municipal employee has its unique challenges and rewards. Every municipal employee, regardless of specific job title, must strive to serve the needs of the public efficiently and courteously. As an employee of the Town, you are an employee of the taxpayers. You should expect to be held to a high standard of productivity when accepting employment with the Town. Please remember that often you are the first line representative of all of the Town's employees and first impressions are lasting impressions. Take pride in your work; we are proud to have you as part of the municipal team.

It is our wish that the material presented here will help make your work easier and more rewarding, as well as answer pertinent questions about your job, status, and benefits as a Town employee. Any questions relating to the interpretation of policies in this handbook should be referred to the Town Manager.

Only the Select Board is authorized to create an employment contract, and a signed written agreement is required for them to do so. The provisions of the Town's personnel policy or any similar written document developed or disseminated by the Town are designed and intended to provide guidance and information, and do not create an employment contract or other employment obligation for the employee or employer.

Any such document is the Town's confidential data or information, and can only be used for internal purpose unless the employee obtains the prior written permission of the Town. The final interpretation of the provisions of these documents is the exclusive responsibility of the Select Board.

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## I. GENERAL PROVISIONS

**A. Authority** - These regulations are promulgated in accordance with authority granted by Chapter 55 of the Acts and Resolves of 1956.

**B. Purpose** - The purpose of these regulations is to establish in writing the Town's policies and procedures governing employment with the Town to insure their consistent application to all employees and facilitate uniform and consistent administration of said policies and procedures.

**C. Application** - These regulations do not apply to elected officials or other employees who may be specifically exempt by law. Employees covered by union contracts or bargaining association's agreements are subject only to those provisions which are not specifically regulated by contract or agreement. In cases where a conflict exists between the contract or agreement and these regulations, the appropriate section of the collective bargaining agreement shall prevail. Nothing in these regulations shall be construed to limit any rights of employees pursuant to Chapter 150E of the Massachusetts General Laws.

**D. Administration** - These regulations shall be administered by the Town Manager reporting to the Board of Selectmen. In the absence of a Town Manager the Board of Selectmen shall administer these regulations.

**E. Rules of Interpretation** - These regulations are intended to be in accordance with all applicable State and Federal Laws. In the event of any conflict, the applicable State and Federal Law shall apply.

The words "he" or "his" shall also mean "she" or "her".

The word "Town" shall mean the Town of Sandisfield.

The word "employee" shall mean an employee of the Town of Sandisfield.

The phrase "Town Manager" shall mean the Town Manager of Sandisfield.

**F. Amendments** - Amendment of these regulations shall be proposed by the Town Manager to the Board of Selectmen in writing. A majority of the full Board shall then ratify or disapprove the proposed amendment, and notify the Town Manager of said action in writing within thirty (30) days of its inclusion on the Board's next meeting agenda. Employees shall be notified prior to the proposal's inclusion on the Board's meeting agenda and within seven (7) days of the Board's final action on the proposed amendments. If ratified, the amendment shall become effective 90-days following ratification and each employee will receive a copy of the approved changes.

### G. Definitions

**FULL-TIME EMPLOYEE** - An employee having established hours of work consisting of at least forty (40) hours per week for fifty-two (52) weeks per year.

**PART-TIME EMPLOYEE** - An employee who is not considered a Full-Time Employee, but has established hours of work consisting of at least twenty (20) hours per week for fifty-two (52) weeks per year. An employee who works less than twenty (20) hours per week is not entitled to the benefits described in Section XI.

**INTERMITTENT EMPLOYEE** - An employee that works on an irregular basis, determined by the workload in the department, throughout the year.

**TEMPORARY / SEASONAL EMPLOYEE** - An employee that is appointed for a fixed period of time, not to exceed eight (8) months, who is hired to replace an employee who might be absent for

extended periods, or to alleviate conditions caused by increased workloads, or to perform a short term special task.

**EMERGENCY EMPLOYEE** - A non-competitive appointment to a position for a period of time not to exceed two (2) weeks to prevent stoppage of public business, a hazard or serious inconvenience to the general public.

**CONTINUOUS SERVICE** - Employment by the Town without a break in employment.

**SENIORITY** - The length of continuous service of an employee.

**BREAK IN EMPLOYMENT** - Occurs in the following instances:

If an employee shall terminate employment with the Town of his accord, or; If an employee shall be discharged, or;

If an employee shall be absent in excess of five (5) consecutive working days without obtaining approval for such absence, or;

If, after a layoff, an employee shall not return to work within ten (10) days after receipt of notice from the Town that he is rehired.

**OVERTIME** - Time worked in excess of the normal workweek of forty (40) hours. (Note: Leave time is counted as hours worked for the purposes of overtime calculations.)

## **II. RECRUITMENT**

The Town will make every effort to attract and hire the most qualified persons, consistent with the Town's practice of equal employment opportunity. Every individual regardless of race, creed, color, nationality, religion, gender, age, sexual orientation, veteran's status, or handicap applying for employment with the Town will receive equal treatment. The recruitment, selection, and promotion of employees will be based solely on job-related criteria as established by the Town Manager and Board of Selectmen.

**A. Responsibility** - The Town Manager shall be responsible for the recruitment and selection of all positions in the Town and said selection shall be subject to approval by the Board of Selectmen. The qualifications, classification, and salary range for open positions shall be established by the Town Manager.

**B. Posting** - All vacancies will be posted on the bulletin board in Town Hall. Each job posting will include the job title, a brief job description, minimum qualifications, salary range, due date for applications/resumes, and place for returning applications/resumes. Town employees, when fully qualified for a position, shall receive first consideration with respect to filling any vacancies (to the extent that this is possible in accordance with the Town's affirmative action goals.)

**C. Applications** - All candidates applying for employment with the Town must complete an official employment application form and return it to the designated place prior to the end of the working day of the closing date specified for a position in the announcement. At the Town Manager's discretion, a resume may be submitted in place of or in addition to an official employment application form.

**D. Physical Examinations** - Physical examinations may be required as part of the hiring process.

**E. References/Background Checks** - Prior to final appointment, candidates selected for further consideration will have their references consulted and background checks conducted by the Department Head. Such reference checks shall require prior approval of the candidate and the candidate will furnish the Town with a release (on a form provided by the Town) to hold the Town harmless from acting upon any information provided to it.

### III. APPOINTMENT

**A. Start Date and Orientation** - It is the policy of the Town to ensure that all employees are adequately informed of the rights and responsibilities of the Town and the employee as they relate to employment with the Town.

Every individual will be notified of a starting date and time and shall report to the Town Manager's office. If the employee has been hired under the provisions of a collective bargaining agreement, a copy of the agreement shall be given to the employee. All new employees shall receive a copy of this manual.

The Town Manager shall thoroughly explain all of the benefits and options the employee is entitled to and shall assist the employee with the appropriate forms pertaining to income deductions, life insurance, group health insurance, retirement, and others as applicable. The Town Manager shall also explain these rules and regulations as they affect the employee.

The Department Head will be responsible for on-site training and orientation regarding specific rules, regulations, policies and procedures of the employee's assigned department, including the safety policy and procedures.

### IV. CLASSIFICATION PLAN

**A. Purpose** - To provide a uniform and objective system for classifying all positions in the Town and to establish proper relationships between positions based on difficulty of duties performed, level of responsibilities assumed and minimum qualifications required so that the same schedule of compensation may be equitably applied to each class thus ensuring equal pay for equal work.

**B. Content of Plan** - The classification plan shall consist of:

1. Position titles - The title of each position shall be the official title of that position and shall be used for administrative purposes such as payroll, budget, financial and personnel forms and records. No person shall be appointed or promoted to any position in the Town under a title that is not included in the Classifications Plan.
2. Position descriptions - Each position shall have a written description consisting of a statement describing the nature of the work; examples of the typical duties; the required minimum knowledge, skills, training, abilities, experience, and any necessary special qualifications.
3. Rates of Pay - Each position shall have a minimum and maximum range assigned to it. No person shall be hired at or promoted to a salary outside of the range for that position.

**C. Administration of Plan** - The Town Manager shall have primary responsibility for the administration and day-to-day maintenance of the classification plan.

**D. Classification of New Positions** - Department Heads proposing to establish new positions shall first provide the Town Manager with a description of duties, skills, knowledge, abilities and other work performance requirements in sufficient detail to properly classify the position. There shall be no action to fill any new position in the town until it has been approved and budgeted for by the Board of Selectmen.

**E. Reclassification of Existing Positions** - Reclassification of an existing position will occur only when the duties of a position merits transfer to another pay grade reflecting its new duties, responsibilities and authority.

## V. COMPENSATION

**A. Overtime**- Exempt employees (Professional, Executive, and Administrative Employees) shall not be eligible for overtime. The Town utilizes the Department of Labor and Industries standards to define "Professional, Executive, and Administrative" positions. See Appendix E for a list of positions that are exempt from the requirements of the Fair Labor Standards Act.

All Non-Exempt (hourly wage) employees are eligible for overtime and shall be paid at one and one-half times the employee's regular rate of pay for all time worked in excess of forty (40) hours worked in any one payroll week.

Town employees may be called upon and required to work overtime if in the opinion of the department head it is necessary to meet the demands of the job being performed. Department heads shall minimize the working of overtime by staff by utilizing relief or substitute employees whenever possible. Except for emergency situations, all overtime work must be approved in advance by the department head. Employees who repeatedly refuse to work overtime without valid justification may be subject to disciplinary action.

Exempt employees shall not be eligible to receive overtime pay, but may receive compensatory time in lieu of overtime (see next section).

**B. Compensatory Time** - Administrative and Executive Exempt personnel shall be eligible for compensatory leave, but due to the nature of their responsibilities, not on an assumed hour for hour basis. Exempt personnel may not demand compensatory leave due as a matter of right. The Town Manager may grant compensatory leave to Exempt Employees only in specific cases such as a particularly prolonged period of excess hours required or a particularly large number of excess hours required in a short period of time. The Town Manager shall strive to administer this policy fairly to all Exempt employees. The Town Manager shall make all determinations of Exempt Personnel leave due, and his/her ruling shall be final.

All Non-Exempt employees may substitute compensatory time for overtime pay. The hours of compensatory time to be awarded shall be calculated in the same manner as were the hours of overtime pay. One hour of overtime shall equal one and one-half hours of compensatory time.

Requests for compensatory time must be submitted in writing, and must be approved in advance by the department head. No more than forty-eight (48) hours may be accrued for compensatory time. Approved compensatory time must be used as soon as possible but not later than one hundred twenty (120) days from the day the compensatory time was earned.

Compensatory time may be applied to vacation leave and to sick leave after all available sick leave credits have been expended.

It shall be the responsibility of the department head to maintain complete compensatory records on all employees and to accurately record dates and hours of overtime worked and the date compensatory time is taken.

**C. Flexible Time** - The Town has established standard working hours for each department in order to provide continuity in access by and service to the citizenry, facilitate teamwork, and facilitate supervisory assistance. Individual requests for adjustment of working hours for personal reasons must be evaluated in light of the effect on the criteria outlined above. The Town Manager and department heads have authority to allow employees to work on a flexible schedule to meet individual concerns not inconsistent with the requirements of the department and within the following constraints:

Employees must request consideration for flexible hours from their supervisor in advance; flexible hours may not be used to accrue compensatory time. The hours represented by the flexible schedule must equal the employee's workweek each week; The Town encourages employees to take their lunch break. Working through lunch is considered an exchange of time and is not eligible for overtime payment or compensatory time at time and one half. Flexibility in employee's schedules is allowed at the Town Manager's or department head's discretion. The Town Manager and department heads are not required to allow such flexibility. However, such flexibility shall not be unreasonably withheld.

#### **D. Miscellaneous Compensation items**

Shift differential for employees shall be 10% for 3-11 shift and 15% for 11-7 shift.

Shoe Allowance/Prescription Safety Glasses Benefits - The Town shall reimburse eligible employees whose job activities require safety shoes as recommended by OSHA and confirmed by the department head and the Town Manager for one pair of work shoes per year and shall reimburse part-time Firefighter/EMT/Custodians for one pair of work shoes every two years. The Town shall pay no more than \$100.00 for each pair of shoes, and receipts shall be submitted before payment is made.

The Town shall reimburse eligible employees whose job activities require safety glasses as recommended by OSHA and confirmed by the department head and Town Manager for one pair of safety glasses per year. The Town shall pay no more than \$75.00 per year for each pair of glasses, and receipts shall be submitted before payment is made.

## **VI. EMPLOYEE LEAVE**

On or around the anniversary date of employment, the Town shall notify each employee in writing of his available leave for the forthcoming year. For all employees, one day shall mean one-fifth (1/5) of the regularly scheduled hours worked per week.

### **A. Vacations**

**1. Eligibility** - All Full-Time Employees and Part-Time Employees are eligible for vacation leave. Generally, no vacation leave may be used until the employee has completed fifty-two (52) weeks of employment. Employees covered by collective bargaining agreements shall have vacation accumulation and usage as outlined in those agreements.

**2. Accrual** - Vacation leave shall be earned and credited to each eligible employee on their anniversary date of employment. The amount of vacation leave earned shall be determined by the length of continuous employment with the Town according to the following schedule:

<u>Completed Years of Service</u>	<u>Days of Vacation Leave</u>
At least one (1)	10
At least five (5)	15*
At least fifteen (15)	20
At least twenty (20)	25

\*One additional day of vacation shall be earned for each year of service between years eleven and fifteen.

**3. Scheduling and Use** - Vacation must be taken in the year in which it was credited unless prior approval has been received from the Town Manager to carry it forward to the next year. Should circumstances arise which prevent an employee from using vacation leave, the employee may petition the Town Manager to carry it forward to the next year. In no case may more than ten (10) days of leave be carried forward. The leave carried forward must be used before the next anniversary date. Unused leave is forfeited. The Town Manager's decision regarding such petitions shall be final.

Vacations shall be scheduled with the prior approval of the employee's department head, or, in the case of department heads, shall be scheduled with the prior approval of the Town Manager. Employees entitled to more than two (2) weeks' vacation may generally take only two (2) weeks consecutively. However, with the prior approval of the employee's department head, or, in the case of department heads with the prior approval of the Town Manager, exceptions may be made to allow the use of longer periods of time.

**4. Sickness During Vacation** - An employee who becomes ill while on vacation may not charge such illness to sick leave.

## **B. Sick Leave**

**1. Accrual** - All Full-time and Part-time Employees shall earn and be credited with twelve (12) days per year, based on the employee's anniversary date of hire. In addition, employees shall be allowed to accumulate a maximum of ninety (90) days of sick leave, exclusive of Sundays and holidays, which may be carried forward year to year for use in the case of extended illnesses.

**2. Scheduling and Use** - New employees may accrue, but not use, sick leave until after six (6) months of employment have been satisfactorily completed.

Sick leave will commence on the date and time of notification of the employee's sickness, injury, or quarantining. Notification shall be made by the employee, a family member, or his physician to the employee's department head or, if necessary, Town Manager's office. Notification should be given as soon as possible, but in any case before one (1) hour after the regularly appointed starting time of the employee in order to entitle the employee to sick leave credit for that day. Notification should include the general nature of the illness or injury, length of anticipated absence, and expected date of return.

**Certification of Illness** - The Town Manager may require medical certification of illness or injury from any employee whose sick leave exceeds five (5) consecutive work days. If certification cannot be provided to the satisfaction of the Town Manager, the employee's absence shall be considered an unauthorized Absence without Leave. The medical certification should include a description of the employee's illness or injury and the physician's estimate of the day on which the employee will return to duty. The employee, prior to his return to duty, may be required to obtain a medical certification of his ability to do so.

**3. Suspected Abuse** - Whenever a department head has reason to believe that an employee is (or a group of employees are) abusing sick leave, the department head may require the employee(s) to provide written medical verification of illness. Requests for medical verification should generally be made during or immediately following the absence in question.

**4. Sanctions** - Failure to comply with any and all directives issued in accordance with the above procedures may result in disciplinary action.

**5. Workmen's Compensation** - Employees injured on the job and receiving Workmen's Compensation shall, upon request, be granted sick leave with pay (provided they have sick leave credits available) in an amount that, when added to their Workmen's Compensation payment, will result in payment of the regular salary for their classification and grade.

## C. Holidays

**I. Recognized Holidays** - The Town shall recognize as holidays those days so designated by the Secretary of State for the Commonwealth of Massachusetts, and will observe said holidays on the same day the Commonwealth observes them. On or before July 1st of each year, the Town Manager shall notify the employees of the holidays to be recognized by the Town during the upcoming calendar year. Recognized holidays include the following:

New Year's Day	Independence Day
Martin Luther King, Jr.'s Birthday	Labor Day
Washington's Birthday	Indigenous Peoples Day
Patriots Day	Veterans Day
Memorial Day	Thanksgiving Day
Juneteenth	Christmas Day

In addition to the above holidays, the day after Thanksgiving Day is a paid day off for employees unless otherwise required to work. Employees required to work have the option of earning the time as comp time.

Holidays which fall on Saturday will be observed on Friday. Holidays which fall on Sunday will be observed on Monday.

**2. Compensation** - For each recognized holiday, all Full-Time and Part-Time Employees who have not been required to work shall receive compensation for one-fifth (1/5) of their regularly scheduled hours per week. The pay rate used for purposes of this calculation shall be the employee's pay rate at the time of the holiday.

Payment of the above shall be withheld if an employee is Absent without Leave on either the last regularly scheduled working day before or the first regularly scheduled working day after the holiday.

An eligible employee who is required to work on a holiday or on the day of observance shall receive compensation equal to one and one-half times his regular pay. The employee may choose to receive one and one-half (1.5) compensatory days off within the following thirty (30) days in lieu of overtime compensation. Permanent Full-Time Hourly Employees who are required to work on Thanksgiving Day, Christmas Day, or the fourth of July shall be paid at two times the employee's rate of pay for all hours worked on said holidays.

**3. Work on a Holiday** - On all holidays recognized by the Town, employees shall be excused from duty except in those cases where the department head determines that the employee's presence is required to maintain essential Town services.

## **D. Personal Leave**

**1. Accrual** - All Full-Time and Part-Time Employees shall be credited with three (3) days of personal leave with pay on their anniversary date of hire.

**2. Scheduling and Use** - Personal leave is to be used for personal reasons other than illness or vacation and cannot be used to extend vacation or holiday periods except in an emergency. Personal leave must be used within one year. Newly hired employees may not use personal leave until they have completed fifty-two (52) weeks of employment.

The employee must request personal leave from his department head, or in the case of department heads, from the Town Manager, at least forty-eight (48) hours prior to the anticipated beginning of such leave.

## **E. Family Illness/Bereavement Leave**

Eligible employees shall be allowed five (5) days per year for family illness or bereavement leave with pay. This leave will be credited to each eligible employee on their anniversary date of hire. This leave must be used within one year. If bereavement leave is requested due to the death of a spouse or child, an employee may request the use of up to five (5) additional accrued sick days to be used as bereavement leave.

## **F. Bonus Day Off for Perfect Attendance**

After completion of 365 days of perfect attendance, Full-Time and Part-Time Employees shall be allowed each year, for perfect attendance defined as usage of zero (0) hours of sick or family illness leave, one additional day off (floating day of employee's choice) with pay. The bonus day off shall be scheduled with the prior approval of the employee's department head, or, in the case of department heads, shall be scheduled with the prior approval of the Town Manager.

## **G. Family Medical Leave Act**

A copy of Your Rights Under The Family Medical Leave Act is attached (Appendix B).

## **H. Small Necessities**

A copy of the Small Necessities Act is attached (Appendix C).

## **I. Jury Duty**

All employees will be granted leave to fulfill required jury duty. Full-Time and Part-Time Employees shall be paid their regular salary (excluding overtime), less the jury fees (exclusive of travel allowances) received, during the period required for the jury duty. It is the employee's responsibility to present to his supervisor written evidence of the fees received for jury duty. As a condition to receiving payment from the Town, an employee must report to work if during such duty he is discharged for the day or major portion thereof during regular work hours.

## **J. Military Leave**

Any employee shall be entitled to leave of absence during the time of compulsory service in the armed forces of the Commonwealth, or during his annual tour of duty of not exceeding seventeen (17) days as

a member of a reserve component of the armed forces of the United States, and shall receive the difference between his regular pay as an employee and his military pay for the period of the leave.

Each employee is responsible for notifying his department head of the date he is leaving for military service and providing written proof from military or selective service officials indicating the date of his required departure and his required length of service.

Each employee is responsible for presenting to his supervisor evidence of compensation received for military service. If the employee receives full payment from the Town during the length of his service, he will immediately reimburse the Town upon receipt of payment for military service. During the military leave, sick and vacation leave will continue to accrue to the employee's account. The period of military leave shall be included in the employee's time of continuous service. If the employee's military leave exceeds seventeen (17) days, the employee may apply all or part of his accrued vacation leave to the period of military leave.

### **K. Public Safety Service Leave**

The Town encourages employees to serve as volunteer EMTs and Firefighters for the Sandisfield Ambulance Squad and the Sandisfield Fire Department. Employees shall be allowed occasional paid leave, at the Department Head's discretion, to respond to emergency calls.

### **L. Leave of Absence**

The Town Manager may grant leaves of absence without pay to all employees who have satisfactorily completed 1 year of service. In reviewing requests for leave, consideration shall be given to:

- The nature of the reason for the request and;
- The employee's work record and;
- The impact the employee's absence will have on the Town and whether a suitable temporary replacement is available.

Leave will not be granted if there is any indication that the employee plans to seek or accept work elsewhere during the time of leave. The leave will be immediately canceled if the employee accepts a position elsewhere.

**Procedure for Request and Approval** - An employee wishing to take a leave of absence shall request such leave in writing through his department head who will forward the request to the Town Manager along with the department head's recommendation on the granting of such leave. Requests for leave of two (2) weeks or less may be approved by the Town Manager. Requests for leaves longer than two (2) weeks must be approved by the Town Manager and the Board of Selectmen.

**Medical Illness** - Employees unable to work due to sickness or injury shall use other accrued leave in accordance with the provisions of this manual. Once an employee has exhausted all accrued sick leave and vacation leave, he may request a medical leave.

During a medical leave of absence, it shall be the responsibility of the department head to determine that a disabling condition does in fact prevent the employee from discharging regular duties. Such determination shall be made in accordance with the provisions covering sick leave in this manual.

**Maternity Leave** - Maternity leave can be taken up to a maximum of eight (8) weeks either as unpaid leave or as paid sick leave, provided the employee has a sufficient number of sick days. Employee benefits will be provided during such leaves of absence. The Town agrees to abide by the Maternity/Adoptive leave provisions of MGL, Chapter 149, Section 105D.

**Status Upon Return** - The period of absence shall be included in an employee's time of continuous service. The pay grade of an employee returning from a leave of absence shall be the pay grade which the employee was receiving immediately prior to the leave, if the employee is returning to the same position. If the employee is not returned to the same position, he will be placed in the pay grade of the new classification which most closely equals his pay grade prior to his leave.

Continued employment in Town service will not be guaranteed to an employee after more than thirty (30) consecutive days of authorized unpaid leave of absence unless otherwise protected by law.

**Benefit Coverage** - During leaves of absence, sick and vacation leaves will not accrue to the employee's account (except for Maternity Leave). During leaves of absence, the Town will continue to pay its share of an employee's health and life insurance premiums for the first thirty (30) days of the leave. After this period has expired, the employee has the option of paying the full premium cost of his health and life insurance policies, or dropping the insurance coverage. If he chooses to pay the full premium, he must notify the Treasurer to arrange payment procedures. The employee must pay the Town for his share of health and life insurance premiums one month in advance of coverage. Employees who do not receive a paycheck for a particular week must pay the appropriate premium directly to the Town during the week that the deduction would have been made had the employee been on the payroll.

During leaves of absence, the rules and regulations of the Berkshire Regional Retirement System apply concerning an employee's pension rights.

### **M. Absence Without Leave**

An employee who is absent from duty shall report the reason for his absence. An unauthorized absence not reported in a timely manner shall be considered absence without leave, and no compensation shall be made for the period of such an absence. Additionally, such an absence may result in disciplinary action against the employee on the part of the Town.

### **N. Leave Upon Termination of Employment**

**1. Vacation** - Whenever employment is terminated by dismissal, resignation with reasonable notice (2 weeks), retirement or death without the employee having been granted entitled vacation leave, the employee shall be paid for all unused vacation leave at the time of the employee's termination. The pay rate used for the purposes of the calculation above shall be the employee's pay rate at the time of his termination.

**Sick Leave** - Permanent Full-Time and Permanent Part-Time Employees who retire with superannuation benefits (retire with pension) from the Berkshire Regional Retirement System and who have in excess of 80 days accrued sick leave shall, upon proper notification to the Town, be paid a lump sum equal to \$100.00 for every accrued sick leave day in excess of 80 days up to a maximum payment of \$1000.00.

Proper notification shall mean written notice of intent to retire submitted to the employee's department head at least sixty (60) days prior to his retirement date or, in the case of death,

presentation of a death certificate. In the event of the death of the employee, their beneficiary shall receive whatever benefit the employee would have received if they had retired on that date.

**Personal Leave** - Whenever employment is terminated by dismissal, resignation with reasonable notice (2 weeks), retirement or death without the employee having been granted entitled personal leave, the employee shall be paid for all unused personal leave at the time of the employee's termination. The pay rate used for the purposes of the calculation above shall be the employee's pay rate at the time of his termination.

## **VII. WORKWEEK**

The payroll period shall be from 12:01 AM on Sunday and end at midnight on the following Saturday.

Each employee or supervisor will be responsible for recording a work attendance schedule as provided by the Town of Sandisfield. This schedule will be turned in to the Department Head on a weekly basis and forwarded to the Payroll Department on a weekly basis so that each employee's benefit schedule can be kept up to date, thus assuring that each employee receives the full benefits to which he is entitled.

## **VIII. PAYDAY**

Employees of the Town of Sandisfield are paid weekly until January 1, 2022, and thereafter biweekly. Employees of the Town of Sandisfield who work 15 hours or more per week are paid biweekly. Employees who work less than 15 hours per week may submit no less than monthly. If an employee receives a stipend over \$1,000, the stipend amount will be divided into 12 payments and paid out monthly. Stipends under \$1,000 will be paid once annually. Payroll sheets must be submitted by 10 AM on Monday. Payday will be Thursday for the preceding week. If Thursday is a holiday, every effort will be made to have paychecks available on Wednesday. The effective date for direct deposit checks will remain Thursday. Direct Deposit is required for all employees. If an employee fails to set up direct deposit, the Town may lower or stop your cash benefits.

## **IX. LUNCH AND REST BREAKS**

An employee required to work more than six hours in one day shall be given twenty (20) minutes of paid rest time. An employee who works eight hours or more will be given twenty (20) minutes paid rest time and a minimum lunch break of thirty (30) minutes (unpaid)

## **X. PERSONAL DATA**

In order to insure that proper benefits coverage is maintained, employees should inform the Town whenever a change occurs in dependent information, beneficiaries, or other personnel and payroll data that the Town maintains. All non-salary changes related to payroll must be in writing and signed by the employee.

## **XI. PERSONNEL RECORDS**

You may request in writing to review your personnel record. Upon submission of a written request to the Town, you will be allowed to view your personnel file. If you disagree with any information contained in you personnel record, you may submit a written statement explaining your position which shall then become a part of the permanent record.

## **XII. BENEFITS**

In addition to the preceding benefits, the Town provides other benefits for Full-Time and Part-Time employees.

**1. Medical Coverage** - Coverage is provided by the Town and there are several plans available. The Town pays a percentage of the cost. This percentage may vary depending on the plan that is chosen. Opt Out Option: Employees may waive the receipt of medical coverage provided proof of alternative insurance is provided. Employees who remain off of a Town plan for three consecutive years will be paid \$3500. An employee may re-enroll in a town plan in the case of a qualifying event or during the annual open enrollment period but doing so will mean a forfeiture of the \$3500 incentive to opt out.

**2. Life Insurance** - Coverage is provided through the Town. The Town currently pays a percentage of the premium for basic life insurance (up to \$10,000) for the employee. Extra coverage for the employee and their dependents is available. The employee must pay the full premium for this extra insurance.

**3. Direct Deposit** - The Town also offers direct deposit of payroll checks for the convenience of its employees.

**4. Retirement** -All Permanent Full-Time and Permanent Part-Time employees under the age of sixty five (65) are automatically enrolled in the Berkshire Regional Retirement System in accordance with Chapter 32 of the Massachusetts General Laws. The effective date of their enrollment is the employee's first day of employment. The Retirement Board has their own rules and regulations, will assist in choosing a retirement option, and will notify employees annually of their account status.

### **XIII. TRAVEL**

**General** -Members of Town Boards, Commissions and Committees and Town employees may perform official travel within the limits of their respective Town Meeting approved annual budgets.

Attendance at conferences and meetings shall be limited to the number of persons necessary to cover the meeting adequately.

Expenses for travel shall be authorized for official Town business only. All expenses shall be recorded and supported by receipts. Reimbursement shall not be made for expenses incurred for the sole benefit of the employee such as valet service, entertainment, laundry services, etc.

**Town Vehicles** -The Town's vehicles shall be used on official business only; and they shall be clearly marked Town of Sandisfield. The Town's vehicles shall be garaged at the Town each evening, unless at the recommendation of the Department Head and with the approval of the Town Manager, a vehicle is assigned to an employee for their use.

Operators are personally responsible for damage and personal injury liabilities arising from accidents if their use of the Town vehicle is unauthorized.

All accidents involving a Town vehicle shall be reported immediately to the Town Manager. Town vehicles shall not transport individuals who are not engaged in Town business.

**Privately Owned Vehicles** -Reimbursement for use of a privately owned vehicle shall be made at a rate set annually by the Board of Selectmen. Signed record of mileage shall be submitted and approved before payment. If two or more persons travel in the same vehicle, only one of the persons shall be reimbursed.

The rate of reimbursement covers all charges except parking and tolls. These expenses will be reimbursed with appropriate receipts.

**Accommodations** - When on approved travel, reasonable charges for hotel rooms shall be reimbursable.

**Meals** - Expenses for meals will be reimbursed at a rate set annually by the Board of Selectmen. No reimbursement shall be made without receipts. The Town will not reimburse any charges for alcoholic beverages.

#### **XIV. ALCOHOL AND DRUG USE TESTING FOR DRIVERS OF TOWN OWNED VEHICLES**

The following is the policy of the Town of Sandisfield regarding testing associated with alcohol misuse and drug use by those employees operating motor vehicles owned by the Town of Sandisfield.

1. The Town of Sandisfield may require drivers to report the use of any therapeutic drugs.
2. Random drug and alcohol testing may be required at the request of the Department head.
3. Alcohol and drug testing may be a pre-employment requirement.

#### **XV. AMERICANS WITH DISABILITIES ACT**

The Town is committed to full compliance with the Americans with Disabilities Act.

#### **XVI. CONDUCT AND DISCIPLINE**

##### **A. Conduct of Employees**

**1. General Policy** - Town employees are prohibited from engaging in any conduct which could reflect unfavorably upon town service. Town employees must avoid any action which might result in or create the impression of using public office for private gain, giving preferential treatment to any person, or losing complete impartiality in conducting town business. Employees are expected to keep in mind that they are public employees and are to conduct themselves in a manner which will in no way discredit the town government, public officials or fellow employees.

**2. Conflict of Interest** - No employee shall accept, or agree to accept, either directly or indirectly, any favor, gift, loan, fee, service or other item of value, in any form whatsoever, from any organization or individual if it is intended or gives the appearance of rewarding or influencing the employee in carrying out his appointed duties.

No employee shall grant, in the discharge of his appointed duties, any improper favor, service, or item of value to any organization or individual if it is intended to give or gives the appearance of rewarding or influencing said organization or individual.

19

No town employee shall transact any business in his official capacity with any business entity of which he is an officer, director, agent, or member, or in which he owns a controlling interest.

No town employee shall have personal investments in any enterprise which will create a substantial conflict between his private interest and the public interest.

This rule is not intended to prevent an employee from accepting an award or recognition for meritorious or outstanding achievement for community or government service.

Final determination of any such conflict or prohibition shall rest with the Town Manager.

**3. Outside Employment** - No employee may engage in additional employment which in any manner interferes with the proper and effective performance of the duties of his position, results in a conflict of interest or if it is reasonable to anticipate that such employment may subject the town to public criticism or embarrassment. If the Town Manager determines that such outside employment is disadvantageous to the Town, upon notification in writing by the Town Manager, the employee shall be given the option to resign from Town employment or his second job.

Any employee who engages in employment outside of his regular working hours shall be subject to call to perform his regular town duties first. The Town shall provide to the employee as much advance notice of additional hours required as possible.

The Town shall in no respect be liable nor grant disability leave in case of injury to an employee while engaged in outside employment, nor in the case of occupational illness attributed to the outside employment.

**4. Privileged Information** - Many town employees deal with plans and programs of significant public interest. Employees must not use this privileged information to their own financial advantage, or to provide friends and acquaintances with financial advantages or with information which could be used for financial advantage. If an employee finds that he has an outside financial interest which could be affected by town plans or activities he must immediately report the situation to his superior. Each employee is charged with the responsibility of insuring that he releases only information that should be made available to the general public. Violation of privileged information or use for private gain can be just cause for discharge of the employee as determined by the Town Manager.

**5. Town Property** - Employees should not, directly or indirectly, use or allow the use of Town property of any kind for other than official activities.

An employee who has been provided town equipment such as tools, vehicles, materials, uniforms, keys, codes, passwords, etc. is expected to exercise reasonable care in the use and preservation of such items and to observe all safety and security precautions while carrying out the assigned work.

Personal use of Town vehicles, materials, supplies, tools, computers or other town property is not permitted. Alterations to Town vehicles, materials, supplies, tools, computers or other town property, regardless of whether said alteration seemingly increases value is not permitted. Any alterations or additions made to Town vehicles, materials, supplies, tools, computers or other town property becomes an asset of the Town of Sandisfield and will not be returned. Violation of any of these points may result in discharge, prosecution or both, or other disciplinary action.

All operators of Town vehicles and equipment must hold a valid and appropriate Massachusetts operator's license. Employees are required to inform their supervisors of any change of status in their license. Suspension or revocation of an employee's operator's license may necessitate the demotion or discharge of an employee assigned to the operation of town vehicles or equipment.

**6. Mail and Telephone Use** - Employees should not use Town telephone facilities for personal calls when the placing of such calls would interfere with the employee's duties, would incur additional financial liability by the Town, or would interfere with the use of the facilities for official business. Any such use should be urgent, infrequent and of short duration.

Town employees are expected to use their home address to receive personal mail. Use of town stationery or postage for personal mail is not permitted.

## **7. Sexual Harassment**

**General Policy** - In order to maintain a work environment in which each employee is treated with dignity and respect, no Town employee shall engage in conduct which may be construed as sexual harassment. For further details see Appendix **F** (Sexual Harassment Policy for the Town of Sandisfield).

## **8. Drug Free Workplace**

The Town of Sandisfield Drug Free Workplace Policy is attached. See Appendix **B**.

## **Disciplinary Action**

**1. General Policy** - It is the responsibility of all employees to observe the regulations necessary for the proper operation of the Town. The Town may utilize any of the following disciplinary actions when appropriate; oral reprimand, written reprimand, suspension, disciplinary probation or discharge. The severity of the disciplinary action shall be in accordance with the severity of the situation.

**2. Reasons For** - Disciplinary action may be imposed upon an employee for failure to fulfill his responsibilities as an employee, including, but not limited to, any of the following:

Incompetence or inefficiency in the performance of his assigned duties, or;  
Inability to perform one or more critical elements of his position, or;  
His use of fraud in securing his position, or;  
His insubordination or disobedience in carrying out reasonable and lawful directions given by a proper supervisor, or;  
His consumption and/or possession of alcoholic beverages while on duty, or;  
His use and/or possession of illegal narcotics while on duty, or;  
His absence without leave, or; his abuse of sick leave, or; his conviction of a felony, or;  
His misuse or unauthorized use of town property, or;  
His disclosure of confidential information.

**3. Oral or Written Reprimand** - At his discretion, a department head who notes unsatisfactory job performance, non-compliance with department regulations or displays of improper conduct may issue an oral or written reprimand and an offer of assistance in correcting the unsatisfactory situation. Oral warnings shall be presented with a maximum regard for minimizing embarrassment to the employee before other employees or the public. All oral and written reprimands shall be entered into the employee's personnel file.

**4. Probation** - If the oral and/or written warning fails to correct the situation the employee may serve a maximum three (3) month disciplinary probation at the discretion of the department head and/or Town Manager. The employee will receive a written notice stating the

reasons for the disciplinary action and effective date of such action, and said notice will be made a part of the employee's personnel file.

When the employee's disciplinary probation expires, the department head will notify the Town Manager in writing that either:

The employee's performance and behavior was satisfactory and that he recommends retaining the employee in his position, or;

The employee's performance and behavior remained unsatisfactory and that he recommends either suspending or discharging the employee.

**5. Suspension** - At the discretion of the department head and/or Town Manager an employee whose performance is unsatisfactory may be suspended without pay for a period or periods that will not exceed a total of thirty (30) days in any twelve month period. Such suspension may be affected in lieu of disciplinary probation or at the expiration of the disciplinary probation. The employee will receive a written notice stating the reasons for the suspension, its effective date and length, and said notice will be made a part of the employee's personnel file. Upon returning from suspension, the employee may be placed on disciplinary probation at the discretion of his department head and/or Town Manager.

**6. Discharge** - An employee may be discharged for either unsatisfactory job performance, inappropriate conduct or violation of town regulations.

If discharged, the employee will receive a written notice stating the reasons for the discharge and its effective date.

## **XVII. TERMINATION**

Employment with the Town has no specified term or length. Employees are free to resign at any time and the Town reserves the right to terminate employment for any reason permissible by law.

**A. Voluntary Termination-** If you should resign from the Town, we would appreciate as much advance notice as possible so that arrangements can be made for your replacement. A minimum of two (2) weeks written notice is sufficient, except if you are in a supervisory capacity, in which case a minimum of one (1) month written notice is required.

**B. Probation** - All newly appointed or promoted employees shall be required to successfully complete a probationary period of up to six (6) months. Said period shall begin on the employee's starting date and be extended by the number of days the employee is absent from work. The Town Manager and the Department Head shall utilize the probationary period to help all new or promoted employees to achieve effective performance standards. They shall also use the probationary period to observe and evaluate the employee's attitude, conduct, and work habits.

**C. Involuntary Termination-** An employee may be removed at any time by the Department Head with the approval of the Town Manager and Board of Selectmen if it is revealed that the employee intentionally falsified information relating to his employment application, was unable or unwilling to perform required duties or that the conduct, habits or dependability of the employee do not merit continuing with the employee in the position. The employee will be notified in writing of the reasons for the termination and the effective date of the action.

Employees are expected to meet standards of performance, attendance and behavior and to follow Town policies and procedures and may be terminated for failure to do so.

If involuntarily terminated, an employee may appeal the decision by following the grievance procedure.

Involuntarily terminated employees will be paid at their regular rate through the date of termination along with pay for any accrued but unused vacation and personal time.

Notwithstanding the above, MGL c39, section 23B procedure shall apply rather than the above where appropriate.

All employees ceasing employment for whatever reason shall return to the Town all equipment of any kind, and turn over all keys, codes, passwords, public records and public property acquired during the course of their employment with the Town in accordance with MGL C.66, Sec. 4.

## **XVIII. SAFETY**

**I. General Policy** - The Town will provide and maintain safe working conditions, follow operating practices that will safeguard all employees and result in safe working conditions and efficient operations.

The Town shall inform every employee of all materials the employee may be exposed to as a result of employment with the Town which is covered under the Massachusetts "Right to Know" legislation and the rights of the employee under that Act. The Town shall also inform the employee of his rights and responsibilities under the Workmen's Compensation laws of the Commonwealth.

**2. Safety Equipment** - All employees who are furnished safety equipment and/or clothing by the Town will be required to wear such safety equipment at all times while doing the work for which the equipment is furnished. Safety gloves, aprons, hard-hats, goggles, face shields, vests, ear protection, etc. provided by the Town are designated for the protection of all employees and must be used. There will be no exceptions.

Safety equipment furnished by the Town and damaged or worn out in use, will be replaced provided there is not evidence of abuse. Where there is evidence of abuse on the part of the employee, the employee will be required to replace the equipment.

**3. Duties and Responsibilities: Supervisor** - Each supervisor has full authority and total responsibility for the maintenance of safe working conditions within his jurisdiction, whether it be in the field, in the shop or in the office.

**4. Duties and Responsibilities: Employee** - Each employee shall: Observe established safety rules, operating procedures and safe work practices in the performance of his job, and; Use personal protective equipment when directed to do so by a supervisor or foreman, and; Identify and report to appropriate management any unsafe areas, conditions or other safety problems, and; Report all accidents promptly to the supervisor or foreman, no matter how slight.

## **XIX. GRIEVANCE PROCEDURE**

All employees have a right to have grievances and concerns regarding their employment heard in a fair, equitable and timely manner. An employee, or his legal representative, who submits a grievance or concern shall be entitled to a prompt written response. When a grievance or concern is found

justified, the employee can expect necessary actions to be taken to resolve the problem grieved. The employee shall not be penalized in any way for filing a grievance, regardless of the outcome.

It is understood that the following issues cannot be the subject of any grievance proceeding.

Issues not relayed directly and primarily with the day-to-day working life of the employee, or;  
Issues not related to the employee's relationship with his supervisor, or;  
Issues related to a general increase or decrease in the level of general wage rates or salaries.

All grievances shall be handled in accordance with the following procedure:

Step 1: Any employee with any questions, concerns, or grievances should first discuss them with his immediate supervisor. The employee and the supervisor are encouraged to work together to resolve the problem at this level.

Step 2: If the employee is not satisfied with the results of Step 1, he may present his grievance in writing to his department head. Within two (2) working days, or such longer period as the parties agree upon, the department head shall meet with the employee to discuss the grievance. Within two (2) working days of the discussion, the department head shall provide a written response to the employee.

Step 3: If the employee is not satisfied with the results of Step 2, he may, within two (2) working days of receiving his department head's written response as detailed in Step 2, present his grievance in writing to the Town Administrator. The Town Administrator shall seek to meet with the employee and the department head to discuss the grievance. The Town Administrator shall render to the employee a decision in writing within fifteen (15) working days, or such longer period as the parties shall agree upon.

Step 4: If the employee is not satisfied with the results of Step 3, he may, within five (5) working days of receiving the Town Administrator's written response as detailed in Step 3, present his grievance in writing to the Board of Selectmen. After reviewing the matter, including discussions with those involved, the Board shall render to the employee a decision in writing within fifteen (15) working days, or such longer period as the parties shall agree upon. The Board's decision shall be final.

## **XX. SEVERABILITY**

If any provision of the Policy shall conflict with any Federal or State statute or Wage and Hour Law or regulations applicable to any position, or any other law, it shall be deemed modified by the law or regulation. The invalidity of any provision hereof shall not be construed to invalidate any other provision of this policy.

## **Appendix A**

### **Drug Free Workplace Policy Statement**

In accordance with 41 USCS SS 701 - 707, the Town of Sandisfield, acting through the Board of Selectmen, will provide a drug free workplace in carrying out any Federal Grant Program. This drug free workplace policy statement certifies that:

- A. All employees of the Town of Sandisfield will review and retain a copy of this statement. Employees are hereby notified that unlawful manufacturing, distribution, dispensation, possession or use of a controlled substance is prohibited when in the employ of the Town of Sandisfield. Any employee in violation of the above statement is subject to disciplinary action which may include termination.
  
- B. The purpose of establishing a drug free workplace is to inform Town employees about:
  - 1. The serious dangers of drug abuse in the workplace
  - 2. The Town's policy of maintaining a drug free workplace
  - 3. Available drug counseling, rehabilitation and employee assistance programs
  - 4. The consequences of employee drug use in the workplace (see A)
  
- C. All employees will be given a copy of this statement to retain and review.
  
- D. As a condition of employment, all employees must abide by the terms of this statement and notify the Department Head or Town Administrator within five (5) days of any criminal drug statute conviction of which the actual criminal conduct itself occurred in the workplace.
  
- E. The Town of Sandisfield will notify federal granting agencies within ten (10) days after receiving notice of any criminal drug statute conviction as detailed in D.
  
- F. The Town of Sandisfield will, within thirty (30) day of receiving any such notice under (D) above, take appropriate personnel action against an employee, which may include disciplinary action up to and including termination; and/or require such employee to participate satisfactorily in an approved drug abuse or assistance program.

The Town of Sandisfield will make a good faith effort to maintain a drug free workplace through the implementation of this policy statement.

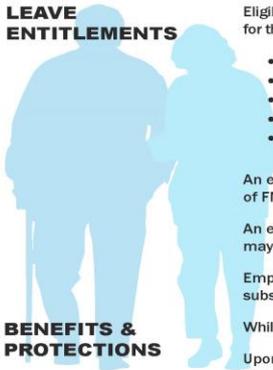
## Appendix B

### FAMILY MEDICAL LEAVE ACT

# EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

#### LEAVE ENTITLEMENTS



Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within 1 year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

#### BENEFITS & PROTECTIONS

#### ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;\* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

\*Special "hours of service" requirements apply to airline flight crew employees.

#### REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

#### EMPLOYER RESPONSIBILITIES

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

#### ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.





For additional information or to file a complaint:

## 1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

# www.dol.gov/whd

U.S. Department of Labor | Wage and Hour Division




**Appendix C**  
**GENERAL LAWS OF MASSACHUSETTS**

**TITLE XXI.**  
**LABOR AND INDUSTRIES.**

**CHAPTER 149. LABOR AND INDUSTRIES.**

**Chapter 149: Section 52D. Family and medical leave; enforcement.**

Section 52D. (a) As used in this section, terms shall have the meanings assigned to them by the federal act, notwithstanding any contrary provision of section 1 of this chapter. In addition, the following terms shall have the following meanings:

"Elderly relative", an individual of at least 60 years of age who is related by blood or marriage to the employee, including a parent.

"Federal act", sections 101 to 105, inclusive, of the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2611 to 2615, inclusive, as it may be amended.

"School", a public or private elementary or secondary school; a Head Start program assisted under the Head Start Act, 42 U.S.C. sections 9831 et seq.; and a children's day care facility licensed under chapter 28A.

(b) An eligible employee shall be entitled to a total of 24 hours of leave during any 12-month period, in addition to leave available under the federal act, to:

(1) participate in school activities directly related to the educational advancement of a son or daughter of the employee, such as parent-teacher conferences or interviewing for a new school;

(2) accompany the son or daughter of the employee to routine medical or dental appointments, such as check-ups or vaccinations; and

(3) accompany an elderly relative of the employee to routine medical or dental appointments or appointments for other professional services related to the elder's care, such as interviewing at nursing or group homes.

(c) Unless this section provides otherwise, the terms of the federal act shall apply to leave under this section. As provided in section 102(d)(2)(A) of the federal act, 29 U.S.C. section 2612(d)(2)(A), an eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for any of the leave provided under this section, but nothing in this section shall require an employer to provide paid sick leave or paid medical leave in any situation in which the employer would not normally provide any such paid leave. Leave under this section may be taken intermittently or on a reduced leave schedule.

(d) If the necessity for leave under this section is foreseeable, the employee shall provide the employer with not less than seven days' notice before the date the leave is to begin. If the necessity for leave is not foreseeable, the employee shall provide such notice as is practicable.

(e) An employer may require that a request for leave under this section be supported by a certification issued at such time and in such manner as the attorney general may by regulation require.

(f) The attorney general shall enforce this section, and may obtain injunctive or declaratory relief for this purpose. Violation of this section shall be subject to the second paragraph of section 150 and to section 180.

## Appendix D

### GENERAL LAWS OF MASSACHUSETTS TITLE XXI. LABOR AND INDUSTRIES

#### CHAPTER 149. LABOR AND INDUSTRIES.

##### **Chapter 149: Section 105D. Entitlement of female employees; rights and benefits.**

A female employee who has completed the initial probationary period set by the terms of her employment or, if there is no such probationary period, has been employed by the same employer for at least three consecutive months as a full-time employee, who is absent from such employment for a period not exceeding eight weeks for the purpose of giving birth or for adopting a child under the age of eighteen or for adopting a child under the age of twenty-three if the child is mentally or physically disabled, said period to be hereinafter called maternity leave, and who shall give at least two weeks' notice to her employer of her anticipated date of departure and intention to return, shall be restored to her previous, or a similar, position with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of her leave. Said maternity leave may be with or without pay at the discretion of the employer.

Such employer shall not be required to restore an employee on maternity leave to her previous or a similar position if other employees of equal length of service credit and status in the same or similar position have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of such maternity leave; provided, however, that such employee on maternity leave shall retain any preferential consideration for another position to which she may be entitled as of the date of her leave.

Such maternity leave shall not affect the employee's right to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which she was eligible at the date of her leave, and any other advantages or rights of her employment incident to her employment position; provided, however, that such maternity leave shall not be included, when applicable, in the computation of such benefits, rights, and advantages; and provided, further, that the employer need not provide for the cost of any benefits, plans, or programs during the period of maternity leave unless such employer so provides for all employees on leave of absence. Nothing in this section shall be construed to affect any bargaining agreement or company policy which provides for greater or additional benefits than those required under this section.

A notice of this provision shall be posted in every establishment in which females are employed. For the purposes of this section, an "employer" shall be defined as in subsection 5 of section one of chapter one hundred and fifty-one B.

**Appendix E**  
**Sexual Harassment Policy Of**  
**The Town of Sandisfield**

I. Introduction

It is the goal of the Town of Sandisfield to promote a workplace that is free of sexual harassment. Sexual harassment of employees occurring in the workplace or in other settings which employees may find themselves in connection with their employment is unlawful and will not be tolerated by this organization. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees.

Because the Town of Sandisfield takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment and where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable regardless of whether that conduct satisfies the definition of sexual harassment.

II. Definition of Sexual Harassment In Massachusetts, the The  
legal definition for sexual harassment is this:

Sexual harassment means sexual advances, request for sexual favors, and verbal or physical conduct of a sexual nature when:

(a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions.

Or

(b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment. The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

Unwelcome sexual advances - whether they involve physical touching or not;

Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;

Displaying sexually suggestive objects, pictures, cartoons;

Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;

Inquiries into one's sexual experiences; and,

Discussion of one's sexual activities.

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by this organization.

### III. Complaints of Sexual Harassment

A committee of three employees of the Town of Sandisfield shall be established to hear complaints of sexual harassment. This committee shall consist of the Town Administrator, one (1) male employee, and one (1) female employee.

If any of our employees believes that he or she has been subjected to sexual harassment, the employee has the right to file a complaint with our organization. This may be done in writing or orally.

If you would like to file a complaint you may do so by contacting the Town Administrator:

Town of Sandisfield,  
P.O. BOX 90  
Sandisfield, MA 01255  
(413) 429 - 8398

The Town Administrator is also available to discuss any concerns you may have and to provide information to you about our policy on sexual harassment and our complaint process.

#### IV. Sexual Harassment Investigation

When we receive the complaint we will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Our investigation will include a private interview with the person filing the complaint and with witnesses. We will also interview the person alleged to have committed sexual harassment. When we have completed our investigation, we will, to the extent appropriate inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

If it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct, and where it is appropriate we will also impose disciplinary action.

#### V. Disciplinary Action

If it is determined that inappropriate conduct has been committed by one of our employees, we will take such action as is appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action as we deem appropriate under the circumstances.

#### VI. State and Federal Remedies

In addition to the above, if you believe that you have been subjected to sexual harassment, you may file a formal complaint with either or both of the government agencies set forth below.

**Using our complaint process does not prohibit you from filing a complaint with these agencies.** Each of the agencies has a short time period for filing a claim (EEOC - 180 days, MCAD - 6 Months)

1. The United State Equal Employment Opportunity Commission (EEOC)  
1 Congress Street - 10<sup>th</sup> Floor  
Boston, MA 02114  
(617)565-3200

2. The Massachusetts Commission Against Discrimination

Boston Office  
One Ashburton Place - Rm 601  
Boston, MA 02108  
(617)727-3990

Springfield Office  
424 Dwight Street Rm 220  
Springfield, MA 01103  
(413)739-2145

## **Appendix E**

### **Discriminatory Harassment Policy of the Town of Sandisfield (Adopted by Board of Selectmen IN THE NEAR FUTURE)**

#### **I. Introduction**

It is the goal of the Town of Sandisfield to promote a workplace that is free of discriminatory harassment ("harassment") of any type, including sexual harassment. Discriminatory harassment consists of unwelcome conduct, whether verbal or physical, that is based on a characteristic protected by law, such as sex, race, color, national origin, religion, age, disability, or sexual orientation. The Town of Sandisfield will not tolerate harassing conduct that affects employment conditions, that interferes unreasonably with an individual's performance, or that creates an intimidating, hostile, or offensive work environment.

Harassment of employees occurring in the workplace, in connection with work-related travel, and/or work sponsored events will not be tolerated. Further, any retaliation against an individual who has complained about harassment or retaliation against individuals for cooperating with an investigation of a harassment complaint is similarly unlawful and will not be tolerated.

Because the Town of Sandisfield takes allegations of harassment seriously, we will respond promptly to complaints of harassment. Where it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of harassment.

#### **II. Definitions**

"Harassment" means unwelcome conduct, whether verbal or physical, that is based on a characteristic protected by law. Harassment includes, but is not limited to:

1. Display or circulation of written materials or pictures that are degrading to a person or group as previously described.
2. Verbal abuse, slurs, derogatory comments, or insults about, directed at, or made in the presence of an individual or group as previously described.

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

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

The definition of sexual harassment is broad. In addition to the above examples, other unwelcome sexually oriented conduct, whether intended or not, that has the effect of creating a work environment that is hostile, offensive, intimidating or humiliating to either male or female workers may also constitute sexual harassment.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

Unwelcome sexual advances — whether they involve physical touching or not;

Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;

Displaying sexually suggestive objects, pictures, cartoons;

Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;

Inquiries into one's sexual experiences; and,

Discussion of one's sexual activities.

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by this organization.

### **III. Complaint Procedures**

All employees, managers, and supervisors of the Town of Sandisfield share responsibility for avoiding, discouraging and reporting any form of discriminatory harassment. The primary responsibility for ensuring proper investigation and resolution of harassment complaints rests with the Town Administrator of the Town of Sandisfield or his/her designee, who will administer the policy and procedures described herein.

If any of our employees believe that he or she has been subjected to discriminatory harassment, the employee has the right to file a complaint with our organization. This may be done in writing or orally. In addition, residents, visitors, applicants, vendors, contractors, their agents and employees, or other third parties who believe they have been subjected to discriminatory harassment may also file a complaint with our organization using the procedures described herein. Furthermore, employees may also file a complaint if they have been subjected to harassment from residents, visitors, applicants, vendors, contractors, their agents and employees, or any other third parties in the workplace, while performing work-related duties, or during other work-related activities.

Prompt reporting of harassment is in the best interest of our organization and is essential to a fair, timely, and thorough investigation. Accordingly, complaints should be filed as soon as possible following the incident(s) at issue. If you would like to file a complaint you may do so by contacting the Town Administrator. This person is also available to discuss any concerns you may have and to provide information to you about our policy on harassment and our complaint process.

### **IV. Complaint Investigation**

When we receive the complaint, we will promptly investigate the allegation in a fair and expeditious manner to determine whether there has been a violation of our policy. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Our investigation will include private interviews with the person filing the complaint and with witnesses. We will also interview the person alleged to have committed harassment. The complainant, the person alleged to have committed harassment, and all witnesses are required to fully cooperate with all aspects of an investigation. Attorneys are not permitted to be present or participate in the complaint investigation. When we have completed our investigation, we will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

Notwithstanding any provision of this policy, we reserve the right to investigate and take action on our own initiative in response to behavior and conduct which may constitute harassment or otherwise be inappropriate, regardless of whether an actual complaint has been filed.

If it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct, and where it is appropriate we will also impose disciplinary action.

## **V. Disciplinary Action**

If it is determined that inappropriate conduct has been committed by one of our employees, we will take such action as is appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action as we deem appropriate under the circumstances.

## **VI. State and Federal Remedies**

In addition to the above, if you believe you have been subjected to discriminatory harassment of any type, including sexual harassment, you may file a formal complaint with either or both of the government agencies set forth below. **Using our complaint process does not prohibit you from filing a complaint with these agencies.** Each of the agencies requires that claims be filed within 300 days from the alleged incident or when the complainant became aware of the incident.

### **The United States Equal Employment Opportunity Commission ("EEOC")**

One Congress Street, 10<sup>th</sup> Floor  
Boston, MA 02114,  
(617) 565-3200

### **The Massachusetts Commission Against Discrimination ("MCAD")**

Boston Office:  
One Ashburton Place, Room 601  
Boston, MA 02108  
(617) 727-3990

Springfield Office:  
424 Dwight Street, Room 220  
Springfield, MA 01103  
(413) 739-2145

Worcester Office:  
22 Front Street, 5<sup>th</sup> Floor  
P.O. Box 8038  
Worcester, MA 01641  
(508) 799-6379

**Appendix G**  
**WHISTLEBLOWER POLICY (Adopted by Board of Selectmen June 4, 2003)**

**Scope.**

This policy is adopted pursuant to and in accordance with the Massachusetts Whistleblower Protection Act, 1992, Massachusetts General Laws, Chapter 149 (the "Act") and is designed specifically to protect such conduct and provide such remedies as are set forth in the Act.

**Policy.**

A. It is the policy of the town:

- 1) To encourage the reporting by its employees of improper governmental action taken by town officers or employees; and
- 2) To protect town employees who have reported improper government actions in accordance with this policy.

B. The town encourages the reporting of improper governmental action taken by any town officers or employees, and the reporting of retaliatory actions for such reporting. The town encourages initial reporting to the town to allow for expeditious resolution of all such matters and to minimize any adverse impacts of the improper action. This policy states the town's procedures for reporting improper governmental action and for protecting employees against retaliatory actions.

**Definitions.**

As used in this policy, the following terms shall have the meaning indicated:

"Employee", any individual who performs services for and under the control and direction of an employer for wages or other remuneration.

"Employer", the commonwealth, and its agencies or subdivisions, including, but not limited to, cities, towns, counties and regional school districts, or any authority, commission, board or instrumentality thereof.

"Public body" .,

- 1) the United States Congress, any state legislature, including the general court, or any popularly elected local government body, or any member or employee thereof;
- 2) any federal, state, or local judiciary, or any member or employee thereof, or any grand or petit jury;
- 3) any federal, state or local law enforcement agency, prosecutorial office, or police or peace officer; or
- 4) any division, board, bureau, office, committee or commission of any of the public bodies described in the above paragraphs of this subsection.

"Supervisor", any individual to whom an employer has given the authority to direct and control the work performance of the affected employee, who has the authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains, or who has been designated by the employer on the notice required.

"Retaliatory action", the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

"Improper governmental action" means any action by a town officer or employee:

- 1) That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and
- 2) That:
  - a. Is in violation of any federal, state or local law or rule;
  - b. Is a substantial and specific danger to the public health or safety; or
- 3) Improper governmental action does not include personnel actions including, but not limited to, employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of applicable collective bargaining and civil service laws, alleged labor agreement violations, reprimands, or any other personnel action taken under authority of state law.

"Rule" means any order, directive, or regulation, the violation of which subjects a person to a penalty or administrative sanction.

## **Procedures.**

A. Town employees who obtain knowledge of facts demonstrating improper governmental actions should raise the issue first with their supervisor, the town manager, the town manager's designee, or the appropriate governmental agency responsible for investigating such improper action. If requested by the supervisor, the town administrator, or the town administrator's designee, the employee shall submit a written report to the town stating in detail the basis for the employee's belief that an improper governmental action has occurred.

B. In the case of an emergency, the employee may report the improper governmental action directly to a person or entity who is not the person's supervisor, the town administrator, the town administrator's designee, or other government agency. In all other cases, the employee must first follow the reporting procedure outlined in subsection A above.

C. An employee is not required to comply with paragraph (A) if he:

- 1) is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer and the situation is emergency in nature;
- 2) reasonably fears physical harm as a result of the disclosure provided; or
- 3) makes the disclosure to a public body for the purpose of providing evidence of what the employee reasonably believes to be a crime.

D. Town employees who fail to make a good-faith attempt to follow this policy in reporting improper governmental action shall not receive the protections provided under this policy or the Act. Employees who make false reports may be subject to the disciplinary procedures in the town personnel code.

E. The supervisor, the town administrator, or the town administrator's designee, as the case maybe, shall take prompt action to assist the town in properly investigating the report of improper governmental action. Town officers, administrators, supervisors, and employees involved in the investigation shall keep the identity of reporting employees confidential to the extent possible under the law, unless the employee authorizes the disclosure of his or her identity in writing. After an investigation has been completed, the employee reporting the improper governmental action shall be advised of the summary of the results of the investigation, except personnel actions taken as a result of the investigation may be kept confidential.

F. Town officials, administrators, supervisors and employees are prohibited from taking retaliatory action against the town employee because he or she has in good faith reported an improper governmental action in accordance with this policy.

G. Employees who believe that they have been retaliated against for reporting an improper governmental action should advise their supervisor, the town administrator, or the town administrator's designee. Town officials, administrators and supervisors shall take appropriate action to investigate and address complaints of retaliation. If the supervisor, the town administrator, or the town administrator's designee, as the case may be, does not satisfactorily resolve a town employee's complaint that he or she has been retaliated against in violation of this policy, the town employee, in accordance with the Act, may, within two years, institute a civil action in the superior court. Any party to said action shall be entitled to claim a jury trial. All remedies available in common law tort actions shall be made available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided herein.

H. The town administrator or the town administrator's designee is responsible for implementing the town's policies and procedures: (1) for reporting improper governmental actions, and (2) for protecting employees against retaliatory actions. This includes insuring that this policy is permanently posted where all employees will have reasonable access to it and that this policy is made available to any employee upon request. The town will, to the extent it considers practical, provide training and education on the whistleblower policy. Town supervisors and administrators are responsible for insuring that this policy is fully implemented within their areas of responsibility. Violations of this policy may result in appropriate disciplinary action, up to and including dismissal.

**EMPLOYEE ACKNOWLEDGMENT**

I have received a copy of the Town of Sandisfield Personnel Policies dated \_\_\_\_\_, 2016.

I have participated in a review of Town of Sandisfield’s Personnel Policies with the Town Administrator dated \_\_\_\_\_ 2016.

I am aware that I am responsible for reading the information contained within. If there is any information I do not understand, I will contact my supervisor or the Town Administrator.

I understand that this manual is intended for guidance and information and does not create an employment contract or other employment obligations for the employer.

I am aware that I will be notified in writing of any changes in policy.

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINTED NAME**

# The General Laws of Massachusetts

## PART I. ADMINISTRATION OF THE GOVERNMENT

### TITLE VII. CITIES, TOWNS AND DISTRICTS CHAPTER 39.

#### MUNICIPAL GOVERNMENT

##### TOWN MEETINGS

#### Chapter 39: Section 23B. Open meetings of governmental bodies

Section 23B. All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitation contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) To be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(c) To speak in his own behalf.

(2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the

Go To:  
[Next Section](#)  
[Previous Section](#)  
[Chapter Table of Content](#)  
[MGL Search Page](#)  
[General Court Home](#)  
Mass. • gov

parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

- (a) To be present at such executive session during discussions or considerations which involve that individual.
- (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.
- (c) To speak in his own behalf.
- (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.
- (4) To discuss the deployment of security personnel or devices.
- (5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.
- (6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.
- (7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.
- (8) To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.
- (9) To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.

This section shall not apply to any chance meeting, or a social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction or advisory power.

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or town in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city or town. The secretary of a regional school district committee shall be considered to be its clerk and he shall file the

notice of meetings of the committee with the clerk of each city or town within such district and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town and such secretary shall post such notice in his office or on the principal official bulletin board of the district. If the meeting shall be of a regional or district governmental body, the officer calling the meeting shall file the notice thereof with the clerk of each city and town within such region or district, and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town. The notice shall be printed in easily readable type and shall contain the date, time and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions. No votes taken in open session shall be by secret ballot.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction or by means of videotape equipment fixed in one or more designated locations determined by the governmental body except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, as defined in this section, the member shall be furnished by the city or town clerk with a copy of this section. Each such member shall sign a written acknowledgement that he has been provided with such a copy.

The district attorney of the county in which the violation occurred shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions for public notice or meetings, for holding open meetings, or for maintaining public records thereof, any justice of the supreme judicial court or the superior court sitting within and for the county in which such governmental body acts shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provisions at future meetings. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney of the county in which the city or town is located. The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of such complaints the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by section eleven A 1/2 of chapter thirty A, by section nine G of chapter thirty-four or by this section. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy. Such order may also include reinstatement without loss of compensation, seniority, tenure or other benefits for any employee discharged at a meeting or hearing held in violation of the provisions of this section.

Such order may also include a civil fine against the governmental body in an amount no greater than one thousand dollars for each meeting held in violation of this section.

The rights of an individual set forth in this section relative to his appearance before a meeting in an executive or open session, are in addition to the rights that an individual may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements, and the exercise or nonexercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

