AGREEMENT

BETWEEN

STATE OF MONTANA

MONTANA CHEMICAL DEPENDENCY CENTER

AND THE

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES

AFL-CIO LOCAL 1620

2015-2017

AGREEMENT
Between the
STATE OF MONTANA
MONTANA CHEMICAL DEPENDENCY CENTER
And the
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES
AFL-CIO LOCAL 1620

THIS AGREEMENT is made and entered into this first day of July 2015 by and between the State of Montana, on behalf of the Montana Chemical Dependency Center, hereinafter referred to as the Employer, and American Federation of State, County and Municipal Employees, AFL-CIO Local 1620, hereinafter referred to as the Union; for the purposes of promoting and improving understanding between the Employer, its employees, and the Union, relative to: Employer-employee relations; conditions of employment; and to provide a means of amicable and equitable adjustment of any and all differences or grievances which may arise.

ARTICLE ONE - RECOGNITION

Section 1. The Employer recognizes the Union as the sole bargaining agent for employees covered by this Agreement working at the Montana Chemical Dependency Center, as listed in Addendum A attached.

Section 2. When new classifications or reclassifications of positions are created at said Facility, the Union will be notified so that any additions or deletions to the classifications listed in Addendum A can be mutually agreed upon prior to their adoption. Disagreements over modifications to the bargaining unit which may result from such notice will be addressed through the unit clarification procedure administered by the Board of Personnel Appeals.

Section 3. Any employee covered by this Agreement who is not a Union member and who does not make application for membership shall, as a condition of continued employment, pay to the Union a service charge as a contribution toward the administration of this Agreement. Employees who fail to comply with this requirement shall be discharged by the Employer within thirty (30) calendar days after receipt of written notice from the Union. Employees shall not be required to become members of the Union but must pay the established service charge.

Section 4. The Employer agrees to accept and honor voluntary written assignments from employees for wages or salaries due and owing for initiation, reinstatement and dues, providing such assignments can be grouped and the total made payable to one assignee. It is agreed that neither the employee nor the Union shall make claim against the Employer for any deductions made or not made. It shall be the Union's responsibility to secure the written assignment from each employee and to provide the same to the Employer.

Section 5. The Union shall certify to the Employer in writing the Union's initiation fee, dues, and service charge amounts. Changes in Union initiation fee and dues, or service charge, rates will be certified to the Employer in writing by an authorized officer of the Union and at least thirty (30) calendar days in advance of such change.

Section 6. The Union will indemnify and hold the Employer harmless against any claim made and against any suit instituted against the Employer, on account of any provision of this Article.

ARTICLE TWO - UNION RIGHTS

Section 1. Visits by Union Representatives. The Employer agrees that accredited representatives of the American Federation of State, County and Municipal Employees, AFL-CIO shall have full and free access to the premises of the Employer at any time during normal working hours to conduct Union business, so long as the duty function of the employee(s) is not impaired. Upon entering premises, Union Representatives must check with the Facility Administrator or designee to make their presence known. Union business will not be conducted in patient areas.

Section 2. Union Bulletin Boards. The Employer shall provide space for a bulletin board in each unit, on each floor of a size and at a location agreed upon for use by the local Union to enable employees of the bargaining unit to see notices. The Union shall provide the bulletin board and management will install it in the agreed upon location. All notices shall be posted by the president of the local union or his/her designee and shall relate to the matters listed below:

Subsection A. Union recreational and/or social affairs.

Subsection B. Union appointments.

Subsection C. Union elections.

Subsection D. Results of Union elections.

Subsection E. Union meetings.

Subsection F. Rulings and policies of Union organizations of which the Union is a member or affiliate.

Subsection G. Any other material authorized by the Employer and the President of the Local Union or his/her designee.

Subsection H. No political campaign literature shall be posted.

Section 3. Monthly Roster of New and Terminated Employees. The Employer agrees to furnish the Union with a list of all newly hired or terminated personnel covered by this Agreement included in Addendum A, on an as needed basis but not later than fourteen (14) calendar days after the end of the last payroll period in any month wherein employees were added or deleted. The following information shall be furnished:

Subsection A. Name and mailing address of each newly hired or reclassified employee.

Subsection B. Classification assigned.

Subsection C. Assigned rate of pay, if other than Step 1 of assigned pay grade.

Subsection D. Names of employees terminated.

Section 4. Seniority Roster. Within thirty (30) calendar days after January 1, of each calendar year, the Employer shall prepare and furnish to the designated Union representative, two copies of a seniority roster of all employees covered by Addendum A.

Subsection A. Such roster shall include the following: The list shall be prepared in numerical rank according to date of hire and shall state the employee's name, present classification title, and date of assumption of present classification.

Subsection B. Employees may protest their seniority designation through the usual grievance procedure if they have cause to believe an error has been made.

Section 5. The Employer agrees to inform the Union of contemplated increases and/or decreases in present services or in new services to be added and normal attrition of the work force.

Section 6. The Employer will notify the Union as soon as possible if they undertake a study to, or to contract-out any services that may affect the employment of members in the bargaining unit. At the time of notice management will notify the Union of any known time lines for the study. It is a right of the bargaining unit to submit to the Employer any data, studies, expert testimony and other such material that is relevant to this undertaking.

Section 7. Union-Employer Relations.

Subsection A. The purpose of this section is to establish an orderly procedure for the review of matters involving hours and working conditions affecting employees covered by the Agreement.

Subsection B. There will be a Joint Union-Employer Committee comprised of two employer representatives and two employee representatives. A field representative from the Montana State Council #9, AFSCME, may serve as one of the employee representatives.

Subsection C. The Union-Employer Committee will meet at least once a month on a date and time mutually agreed upon between the parties hereto; however, either party may request a special meeting at a time mutually agreeable to both parties.

Subsection D. Each party hereto must submit to the other party, at least seven (7) calendar days prior to a scheduled meeting, its agenda and a list of probable representatives who will act in its behalf. The agenda may be expanded at the meeting by mutual agreement.

Subsection E. The agenda shall be limited to items which

a. are of a group rather than individual interest and concern,

b. are recurrent issues not easily resolved, or

c. cannot easily be solved or answered through established supervisory channels.

Subsection F. Disposition of matters covered in the Union-Employer meeting shall not contradict, add to, or otherwise modify the terms and conditions of the "Master Agreement."

Subsection G. Chair of the meeting will rotate from an Employer-designated representative to a Union-designated representative.

Subsection H. Taking of the minutes will alternate between an Employer representative and a Union representative. The minutes shall consist of the topics discussed and the disposition of each. Copies of the minutes shall be reviewed and signed jointly by the facility administrator and the president of the local union before said minutes become official and are distributed. A copy of the approved minutes will be furnished to each party hereto within seven (7) calendar days after being signed.

Section 8. Past Practice. It is understood and agreed that no employee shall suffer a reduction in wages, working conditions, or other benefits previously enjoyed because of the adoption of this Agreement.

ARTICLE THREE - EMPLOYEE RIGHTS

Section 1. Seniority shall be computed from the date the employee began regular service with the Employer. The seniority date of an employee will be adjusted as follows:

Subsection A. Seniority shall be forfeited by discharge for cause, voluntary termination, promotion or demotion into a non-Addendum A position, except in cases where an employee returns to a bargaining unit position within six (6) months the

employee shall retain 50% on their seniority. The Union will make this seniority determination and provide the adjusted date in writing to Management.

Subsection B. Seniority shall be continued during a period of Worker's Compensation absence for a period not to exceed one (1) year as long as the employee is in good standing with AFSCME Council 9 and Local 1620 Seniority for Maternity Leave and Military Leave shall be granted in accordance with state and federal law.

Subsection C. All other approved leaves of absence without pay which exceed fifteen (15) calendar days per calendar year shall be considered lost time for purposes of seniority.

Subsection D. Employees whose seniority dates are the same shall have their respective seniority order determined by drawings with Union representatives present.

Subsection E. The above determination of seniority dates shall become effective upon the signing of this Agreement. Seniority dates which have been previously established will not be readjusted per the provisions of this section, but shall remain as established prior to the signing of this Agreement. Seniority dates which are incorrect because of administrative error may be adjusted with documentation.

Section 2. Promotions. The Employer shall recognize seniority, experience, ability, and qualifications in awarding promotions to employees when filling newly created or vacated positions listed in Addendum A. Where a high school education is a job requisite into promotional positions, current employees who possess applicable experience for the posted position may use such service to satisfy the high school requisite. However, all other requirements must be met and the use of such experience is not to be duplicated in the selection process.

Section 3. Layoffs. Layoffs caused by reduction in force shall be in order of seniority within the classification in which employed; that is, the employee last hired shall be the first released. Employees who are scheduled to be released shall be given at least fourteen (14) calendar days notice. All recalls to employment shall likewise be in order of seniority within the classification in which employed; that is the last employee released as a result of reduction in force shall be the first rehired when the Employer needs additional employees. The Employer shall notify such employees to return to work and furnish the Union a copy of such notification; and if the employee fails to notify the Employer within fourteen (14) calendar days of his or her intention to return to work, such employee shall be considered as having forfeited his or her right to re-employment.

Subsection A. No permanent employee shall be separated while there are temporary employees serving in the same classification.

Subsection B. An employee who is scheduled to be laid off who has advanced to his/her present position from another classification in which he/she held permanent status shall have the right to displace the least senior employee in his/her formerly held

classification, providing his/her seniority accrued within the position to which he/she is returning is greater.

Subsection C. A layoff is defined as the release of employees from duties because of lack of work or funds or under conditions where continuation of such would be inefficient and non-productive.

Subsection D. M.O.M. Policy 3-0155, dated 2/9/96, shall be in effect for active employees and those on layoff status.

Section 4. Job Posting.

Subsection A. When a new position is created or a vacancy occurs in any existing position covered in Addendum A, the Employer shall prepare and furnish the designated Union representative and post in places previously agreed upon a job posting notice stating among other things:

> Location and title of position to be filled; a listing of the principal duties of the position; minimum qualifications; assigned hours of service; assigned days of rest; salary range of the position; whether the position is permanent or temporary; if temporary, how long it is probable the position will continue; the starting date of the assignment; last date when applications of employees covered by this Agreement will be received and accepted; and with whom the applications shall be filed. The selection of employees for Addendum A positions will be in accordance with Section 2 of this Article.

The Employer shall make available to the Union the point system for the interview process and shall provide 30 day notice of any change.

The Union and Employer will review changes in job posting notices during regularly scheduled Labor/Management meetings.

In the instance of a non-anticipated vacancy in an entry level position, the Employer may fill that position on a temporary basis when the vacancy is expected to extend over a period of sixty (60) calendar days or less. At the conclusion of that period or before, the position will be posted as per this Article.

Whenever possible, temporary employees will be notified of the availability of other temporary positions by providing a list of temporary vacancies in a designated place.

Subsection B. The Employer shall designate no less than seven (7) calendar days in which positions will be posted for bid and advertised, weekends excluded.

Subsection C. Applicants shall be appointed in accordance with Section 2 of this Article.

Subsection D. When an employee, who has applied for a posted position, is not assigned thereto, he/she shall, upon written request, be entitled to be advised in writing of the reason he/she did not receive the assignment within fourteen (14) calendar days from the receipt of their request. The employee must make written request for such information within four (4) calendar days from receipt date of rejection notice. If not satisfied with the reason stated for not receiving the assignment, he/she may invoke the grievance procedure as outlined in Article Eleven of this Agreement.

Subsection E. To accelerate recruitment and retention of the Treatment Technician position, portions of the job posting process as stated in the collective bargaining agreement will be waived. This expedited process pertains only to internal postings. The grievance and arbitration procedure will also be waived for any disputes resulting from the modification of the job posting process.

Section 5. Definitions.

Subsection A. Position means a group of duties and responsibilities as defined by job descriptions and assigned to one employee covered by this Agreement.

Subsection B. Class means a group of positions sufficiently similar in the duties performed, degree of supervision exercised or required, minimum requirements of training, experience, or skill and such other characteristics that the same title and the same schedule of compensation may be applied to each position in the group.

Subsection C. Experience means time served in performing relevant work.

Subsection D. Abilities means a measurement of the individual's capacity to perform the duties of the posted position based upon his/her employment history and demonstrated performance.

Section 6. Personnel Files.

Subsection A. Employees covered by this Agreement shall have the right to inspect their permanent personnel files during regular office hours and to receive a copy of any contents therein. Union representatives shall also have the right to inspect an employee's personnel file after receiving written permission from the employee.

Subsection B. An employee shall be informed of any documented allegations or accusations made against him/her which may be made a part of the employee's permanent file. This action shall be taken as soon as is reasonable after the allegation or accusation is made and without regard to whether or not further investigation is pending.

Subsection C. The Employer shall manage the personnel files of employees judiciously in accordance with applicable state law and attorney general opinion.

Subsection D. An employee shall within fourteen (14) calendar days have the right to submit rebuttal comments to discipline and/or evaluations. Written rebuttal, if submitted, will be attached to discipline and/or evaluations by the employer.

Subsection E. Formal letters of discipline placed in an employee's personnel file will be removed after 18 months if there are no further disciplinary actions.

Subsection F. Materials placed in personnel files not in conformity with the above section will not be used in any further disciplinary action.

Subsection G. No materials will be placed in an employee's personnel file without the employee's knowledge.

Section 7. Unfair Treatment. The Employer agrees to investigate and respond to any employee's allegation of unfair treatment by the supervisor.

Section 8. Representation. Employees called to an investigatory interview with the Employer which may result in punitive disciplinary action taken against the employee, may request representation by a Union officer during such meetings.

ARTICLE FOUR - NON-DISCRIMINATION

Section 1. No employee shall be discharged or discriminated against by the Employer for upholding Union principles or Union activities as long as such activity does not interfere with the efficient operation of the facility. The Employer shall grant leave of absence without pay or leave of employee's earned time except sick leave, subject to the efficient operation of the employer's business, to Union officers and duly authorized representative for the conduct of official union business. A reasonable amount of release time shall be granted for the conduct of joint labor/employer meetings or process. In all cases, use of employee's earned or release time for such activities must be requested in advance. A list of duly constituted officers or representatives shall be provided to the Employer once each year and within fourteen (14) calendar days upon each change.

Section 2. All employees shall be protected by all rights guaranteed to them under the United States Constitution, the Civil Rights Act of 1964, as amended, the Montana State Constitution, the Governmental Code of Fair Practices, the Montana Collective Bargaining Act, the Montana Classification Plan and any Montana State Statute that protects Public Employees.

Section 3. In accordance with the provisions of Chapter 3, Title 49, Montana Code Annotated, "Governmental Code of Fair Practices," the Employer shall recruit, appoint, assign, train, evaluate and promote its employees on the basis of merit and qualification, without regard to race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry.

ARTICLE FIVE - HOLIDAY LEAVES

Section1. Holidays.

Subsection A. Employees shall be granted the following holidays without loss of pay provided the employee is in a pay status on his/her last regularly scheduled working day immediately before the holiday or on his/her first regularly scheduled working day immediately after the holiday.

New Year's Day ..... January 1
Martin Luther King Jr. Day ..... 3rd Monday in January
Washington's & Lincoln's Birthdays ..... Third Monday in February
Memorial Day ..... Last Monday in May
Independence Day ..... July 4
Labor Day ..... First Monday in September
Columbus Day ..... Second Monday in October
Veterans' Day ..... November 11
Thanksgiving Day ..... Fourth Thursday in November
Christmas Day ..... December 25
Every day in which a general election is held through the State of Montana

Subsection B. The above-enumerated holiday(s) shall be the recognized holiday(s) for pay purposes.

Subsection C. Eligible part-time employees will receive holiday benefits in accordance with state law.

Subsection D. Full-time permanent employees required to work on a holiday will for their first shift worked be paid one and one-half (1½) times their regular rate of pay and eight (8) hours of regular pay or eight (8) hours of accumulation. Any succeeding shift worked within the holiday shall only be eligible for premium pay at one and one-half times the regular rate and not for any further accumulation. Part-time employees shall not be eligible for accrual, but shall receive one and one-half (1½) times their regular rate of pay for all hours worked on a holiday.

1. Within the first payroll period from the signing of this Agreement or upon employment, all employees shall opt for either pay or accumulation. Until such time as a change in the option is received in writing on the form provided for this purpose, the previous option shall continue. Such option shall be made by giving written notice to management that he/she desires pay at two and one-half (2½) times for the first shift worked on a holiday or pay at one and one-half (1½) times for the first shift worked plus an accumulation of eight (8) hours to be used or paid later at the straight time rate. If an employee does not express an option in accordance with the above, he/she shall receive two and one-half (2½) times pay.

2. Accumulated holidays shall be taken prior to vacation usage.

3. Employees may opt to accumulate up to six (6) holidays per year. Two holidays may be carried over to the following fiscal year. All other accumulated holidays not taken before June 30th of each fiscal year in which earned shall be compensated for at the employee's regular rate of pay.

Subsection E. Observed holidays which fall on an employee's regularly scheduled day off shall be compensated on a straight time basis; either by accumulation, another day off, or a regular day of pay.

Subsection F. If a holiday occurs during the period in which vacation is taken by an employee, the holiday(s) shall not be charged against the employee's annual leave.

Section 2. Holiday leave will be measured and charged to the nearest one-tenth (1/10) of an hour. However, this provision shall have no effect on the crediting of holiday leave time or upon the procedures governing usage of holiday leave.

Section 3. Requests for a holiday or an accrued day off shall be granted subject to the staffing needs of the facility on a seniority basis, provided the senior employee has applied for the desired day off at least ten calendar days prior to the desired day. Requests made less than ten calendar days in advance shall be granted on a first-come, first-served basis.

ARTICLE SIX - SICK LEAVES

Section 1. Sick Leave. Sick leave shall be granted in accordance with MCA 2-18-618.

Subsection A. Controversial use of sick leave should be thoroughly discussed by the employee covered by this Agreement and his/her immediate supervisor and reduced to writing before disciplinary actions are instituted.

Subsection B. Abuse of sick leave is defined as any unauthorized usage arising out of, but not limited to, misrepresentation of need, excessive, controversial, or patterned use of sick leave.

1. The Employer must be able to substantiate any charges of sick leave abuse which result in dismissal and forfeiture of the lump sum payment. Such charges will be in writing and a copy provided to the employee.

2. Abuse of sick leave is subject to disciplinary procedures up to and including termination and forfeiture of the lump sum payment.

Subsection C.

1. To apply for sick leave an employee shall complete a standard request form and submit it to the employee's immediate supervisor or appropriate authority.

a. When the need for sick leave is known in advance, the standard request form shall be submitted as early as practical but prior to the date of absence.

b. When an advance request is not possible, an employee shall inform the person's immediate supervisor or appropriate authority of the absence as soon as practical, and not wait until return to work.

c. Medical, dental, and eye examination appointments shall be authorized in advance, except in cases of emergencies. The Employer retains the right to request verification of an emergency appointment.

2. The employee's immediate supervisor and/or appropriate authority shall review and approve the use of accrued sick leave credits if not at the time the employee submits the request, then at least at the end of each pay period.

3. a. The employee's immediate supervisor or appropriate authority may require medical certification of sick leave charged against any sick leave credits in the form of a statement from a physician or practitioner licensed in Montana to treat and diagnose the particular injury or condition.

b. Employees shall be informed in advance of return to work if a physician's statement is required.

c. Certification or maternity-related disabilities will be obtained in the same manner and under the same conditions as certification for other disabilities.

4. The agency may require an employee to be examined by a physician or practitioner licensed in Montana and acceptable to the agency.

Subsection D. An employee must notify the designated supervisor of his/her inability to report to work as soon as possible and prior to the commencement of his/her shift. Except for unforeseen circumstances, an employee is required to provide a minimum of four (4) hours notification. The Employer shall designate the supervisory chain of command.

Section 2. Sick leave will be measured and charged to the nearest one-tenth (1/10) of an hour. However, this provision shall have no effect on the crediting of sick leave time or upon the procedures governing usage of sick leave.

ARTICLE SEVEN - ANNUAL VACATION LEAVES

Section 1. Annual Vacation Leave.

Subsection A. Each full-time employee is entitled to and shall earn annual vacation leave credits from the first pay period of employment. For calculating vacation leave credits, two thousand eighty (2080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate vacation leave credits shall be earned and credited to the end of each month.

However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of six (6) calendar months. Vacation leave credits shall be earned in accordance with the following schedule:

1. From one (1) full pay period through ten (10) years of employment at the rate of fifteen (15) working days per year;

2. After ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days per year;

3. After fifteen (15) years through twenty (20) years of employment at the rate of twenty one (21) working days per year;

4. After twenty (20) years of employment at the rate of twenty four (24) working days per year.

Permanent part-time employees are entitled to pro-rated annual vacation benefits based on actual time worked.

Vacation leave will be measured and charged to the nearest one-tenth (1/10) of an hour. However, this provision shall have no effect on the crediting of vacation leave time or upon the procedures governing usage of vacation leave.

Subsection B. It shall be unlawful for an Employer to terminate or separate an employee from his/her employment in an attempt to circumvent the provisions of this Article.

Subsection C.

1. Accumulation of Leave. Annual vacation leave may be accumulated to a total not to exceed two (2) times the maximum number of days earned annually as of the last day of any calendar year.

2. Vacation days which exceed the maximum number are forfeited if not taken within ninety (90) days from the last day of the calendar year in which the excess was accrued.

3. Vacation time may be taken on a split-vacation basis.

Subsection D. Absence Because of Illness Not Chargeable Against Vacation Unless Approved by Employee. Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

Section 2. Annual leave of five (5) continuous days or more must be requested at least three (3) months in advance and will be approved or denied no later than one month prior to the leave. Preference shall be given to the first request. Should simultaneous requests occur, seniority shall prevail

Annual leave of less than five (5) continuous days should be requested at least one month in advance and may be approved or denied no later than two (2) weeks prior to the requested date. Such leaves will be considered on a first-come first-serve basis. Should simultaneous requests occur, seniority shall prevail. Annual leave of less than (5) continuous days will be considered on a case-by-case basis. Leaves will be considered on a first come, first serve basis.

Emergency and other leaves requested with less notice than required above will be considered on a case-by-case basis.

A minimum of vacations will be granted during the Christmas and New Year holidays.

ARTICLE EIGHT - OTHER LEAVES

Section 1. Military leave shall be granted in accordance with 10-1-604, M.C.A.
10-1-604. Leave of absence of public employees attending training camp or similar training program. A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of six (6) months shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time.

Section 2. Jury duty leave shall be granted in accordance with 2-18-619, M.C.A.
2-18-619. Jury duty -- service as witness.

(1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his juror time off against his annual leave, he shall not be required to remit his juror fees to

his employer. In no instance is an employee required to remit to his employer any expense or mileage allowance paid him by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave, he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

Section 3. Maternity leave shall be granted in accordance with 49-2-310, M.C.A. 49-2-310. Maternity leave -- unlawful acts of employers. It shall be unlawful for an employer or his agent to:

(1) terminate a woman's employment because of her pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time.

Section 4. Leave Without Pay. Employees who have completed their probationary period of six (6) months may be entitled to take a leave of absence without pay for good and sufficient reason such as, but not limited to, extended illness, personal injury or serious family injury requiring the employee's presence. Requests for leave of absence must be in writing on the standard state form and are subject to Employer approval which may include requiring a doctor's certificate or other satisfactory proof of need. Under extraordinary circumstance the facility administrator may waive the requirement for completion of the six (6) month probation before granting such leave.

Section 5. Education Leave. Any employee who gives evidence of being able to become more useful to the Department of Public Health and Human Services if he/she obtains further professional training may be granted an education leave without pay with the approval of the facility administrator. The granting of this leave will be determined by such factors as:

1. Benefit to the facility or field of service.

2. Benefit to resident training and treatment.

3. Will it increase the value of programs in use?

Section 6. Emergency Leave. In emergencies declared by the Governor of the State of Montana or his/her authorized designee the policy promulgated for that emergency shall prevail, except when in conflict with provisions of this Agreement.

ARTICLE NINE - WORKING CONDITIONS

Section 1. Probationary Period.

Subsection A. The Employer shall have six (6) months after employing an individual to determine the individual's competency in any position covered by this Agreement.

Subsection B. A probationary employee may be separated from employment at any time during the probationary period.

Subsection C. Reason for dismissal shall be in writing and a copy given to the employee.

Subsection D. Additional Trial Periods.

1. Employees shall serve a three-month trial period upon change of job, such as promotion or transfer, however pay shall not be impacted by such probation. During this trial period, the Employer will conduct counseling sessions and evaluate the employee prior to the 90th calendar day. Should the employee be unable to fulfill the duties of the new position satisfactorily, said employee shall return to his/her formerly held classification providing there is an available vacant position.

2. When a like position is not available, the employer shall assign the employee into an available position of lower classification. In such instance, the employee shall return to his/her same step as held just previous to being promoted within the demoted grade. The employee while in the demoted position shall have bidding opportunity per contract, but shall automatically be placed into the first available vacant position in his/her former classification in which instance both Union and Employer agree that the position into which the employee is placed need not be bid.

3. Should a position be unavailable, the most recently hired employee in the lowest classification of the series from which the demoted employee was working directly prior to the promotion or transfer, shall be laid off and said employee who was

demoted placed into that position providing his/her seniority is greater than the seniority of the most recently hired employee who is scheduled for lay off.

4. At any time during the first sixty (60) calendar days of the trial period, the employee may return to his or her previously held position.

Section 2. Performance Evaluations.

Subsection A. Each bargaining unit employee's job performance will be evaluated on the recognized evaluation form approved by the Department of Public Health and Human Services. Prior to a change in the form the Union will be notified.

Subsection B. Each employee will be provided a copy of their completed evaluation and any attachments.

Subsection C. Employees shall have the right to attach their comments to all copies of their performance evaluation.

Section 3. Hours of Work.

Subsection A. Work Day. A standard work day shall not exceed eight (8) hours of work in any twenty-four (24) hour period. A standard work day of eight (8) hours in a twenty-four (24) hour period may be increased or decreased if the Employer and the Union mutually agree on an alternate work schedule for a specific work unit.

Subsection B. Work Period. An employee's forty (40) hour work period shall normally consist of a regularly recurring five (5) consecutive days of employment. An employee's forty (40) hour work period need not coincide with the seven (7) day work week. The recurring five (5) consecutive days of employment can be changed to accommodate an alternate work schedule to meet the staffing requirements of the employer. Alternate work schedules may be developed and implemented if mutually agreed on by the employee and the Employer, with Union notification of change.

Subsection C. Work Week. A standard work week shall consist of seven (7) regularly recurring consecutive days as established by the Employer.

Subsection D. Both parties understand that the Employer has the right to schedule. It is also understood that the parties are bound by law in the duty to bargain collectively over hours and other conditions of employment.

Subsection E. The following procedures are hereunder set forth which described the intent of Subsection D above as agreeable to the parties to this Agreement:

1. Prior to any permanent change in a bargaining unit employee's hours of work or days off, the Employer shall notify the affected employee and the Union. The parties shall meet within seven (7) calendar days and discuss the justification for

the proposed change and alternatives. The Employer agrees that such change shall be based upon need and recognizes that employees have the right to expect continuity in shift and days off unless the Employer provides substantive basis for change. If no agreement is reached after discussion, the Employer will assign the least senior employee within the class to the needed duty, but shall provide fourteen (14) calendar day notice to allow the affected employee to make necessary personal arrangements.

2. Prior to any reorganization affecting five (5) or more employees, the parties to this agreement will meet and discuss resultant changes and alternatives before implementation. After such time if no agreement is reached by the parties, the Employer will implement a general bid posting of positions affected by the reorganization. In such instance, only bids from affected employees shall be accepted. Bidding shall further be limited to the affected class and employees within a class shall have first option on the basis of seniority for placement into any like classification resulting from the reorganization.

3. The Employer may make temporary changes in bargaining unit employees' hours of work and days off. Changes will not normally exceed eight (8) hours in any standard work period.

The Employer will give as much advance notice as possible regarding temporary schedule changes; however, it is understood that advance notice may not be possible in emergency situations.

Section 4. Meals. All employees will be granted one free meal within their assigned shifts. It is understood that employees may be assigned duties during their meal period.

Section 5. Mandatory Meetings. The Employer may not require employees to attend mandatory meetings on the employees' own time.

Section 6. Separation. Employees who terminate their service with the Employer shall be furnished, upon request, a letter stating their classification, length of service and reason for leaving.

Section 7. Definitions.

Subsection A. Employee means any person, in a position covered by this Agreement, in the employment of an agency paid a salary or a wage.

Subsection B. Permanent employee means an employee whose permanent retention has not been disputed during a probationary period and is scheduled to work forty (40) hours a week in a regular schedule.

Subsection C. Probationary employee means a newly hired employee scheduled to work forty (40) hours a week in regular schedule and is placed on probation for six (6) months so the employer may determine his/her competency.

Subsection D. Part-time permanent employee means a permanent employee who works less than forty (40) hours a week in a regular schedule that may be continued.

Section 8. Work Rules.

Subsection A. The Employer agrees to make available a copy of all existing work rules thirty (30) calendar days after the signing of this Agreement and also agrees to include additions or changes within twenty (20) calendar days after they become effective.

Subsection B. Changes not of an emergency nature in existing work rules will be discussed with the Union before implementation.

Section 9. All employees shall be granted a fifteen (15) minute rest break during the first four hours of the shift and another fifteen (15) minute rest break during the second four (4) hours of the shift. Breaks will be granted with the understanding that they may be interrupted for emergency service. The employer will designate break areas.

Section 10. Training Programs.

A. The Union will be contacted by the Employer when a training program is implemented for employees listed under Addendum A.

B. The Employer shall provide orientation training to all new employees.

C. The Employer shall make available job-related and in-service training for employees within the fiscal ability of the Employer.

D. Costs for training required by the Employer shall be paid for by the Employer.

ARTICLE TEN - HEALTH, SAFETY, AND WELFARE

Section 1. Industrial Accident Insurance. The Employer shall carry Industrial Accident Insurance on all employees. Employees must, within twenty four (24) hours, report in writing all personal injuries received in the course of employment to their supervisor. The Employer will insure that first aid supplies are maintained on its premises.

Section 2.
The State of Montana agrees to increase the employer's share of the individual health contributions for group benefits by 10% ($976 a month) from January 2016 through December 2016 and by 8% ($1054 a month) from January 2017 through December 2017.

Section 3. For employees on Workers' Compensation, Family and Medical Leave Act (FMLA), and/or extended non-paid approved sick leave, the Employer shall continue the Employer's contributions to their group health and accident insurance plan for such period up to and including twelve (12) weeks of such leave.

Section 4. Workers' Compensation payments administered by the Division of Workers' Compensation of the Department of Labor and Industry are for the purpose of offsetting the loss of income suffered by an employee who is injured on the job.

Section 5. Employees have the right to refuse to work under conditions which, through consensus arrived at in a Joint Union-Employer Committee meeting, are unsafe for employees and which continue to pose a threat of physical harm to employees in spite of Committee recommendations as to remedial action to be taken to correct the hazardous conditions. Where fiscal requirements for remedial action is beyond the ability of the Employer to address through current budget allocation the Union recognizes that this right must be subordinated to the right of residents/patients to care and treatment. Should an unsafe situation arise which requires immediate attention, an employee or the Union shall be given immediate access to the Facility Administrator to discuss the problem.

Section 6. Personal Property. When loss or damage is caused as a result of employment, the Employer will provide just compensation for destruction of prosthetic devices and Employer approved, required items upon the incident having been reported to the employee's supervisor prior to the end of the shift during which the incident occurred and claim being made to the Employer within seventy-two (72) hours. The Employer will not be liable in the event that such is paid for by coverage paid or participated in by the Employer.

ARTICLE ELEVEN - GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. Having a desire to create and maintain labor relations harmony between them, the parties hereto agree that they will promptly attempt to resolve any employee grievance. A grievance is any dispute, which may arise between an employee and the Employer and having reference and arising out of the application, meaning or interpretation of this Agreement. Grievance Committee members may process grievances during normal working hours without loss of pay.However , the individual(s) involved must notify the Employer prior to conducting such business during their scheduled shift.

At least three employees selected by the Union as Union Representatives shall be known as “Stewards”. The names of employees selected as Stewards and the names of other employees selected as the Grievance Committee shall be certified in writing to the Employer by the Local Union.

Section 2. Grievance Procedure.

Step 1. Any grievance shall be taken up with the employee's immediate supervisor within seven (7) calendar days of the event leading to the grievance. Whenever an employee receives advance notice of a formal disciplinary action, the grievance shall be filed within seven (7) calendar days from receipt of the notice. The immediate supervisor shall have seven (7) calendar days to respond to the grievance. A complaint will not be considered a grievance until the Employee(s) and Steward(s) bringing forth the complaint have submitted the completed Grievance Form to their immediate Supervisor.

Step 2. If the grievance is not resolved at Step 1, the grievance may be presented in writing within fourteen (14) calendar days from the receipt of the immediate supervisor's response of Step 1 to the Administrator or his/her designee. The Superintendent or his/her designee at the second step shall have fourteen (14) calendar days from receipt of the grievance to respond in writing.

Step 3. If the grievance is not resolved at Step 2, it may be presented to the department director or his/her designee within fourteen (14) calendar days of the receipt of the Step 2 response. The department director shall have twenty-one (21) calendar days to respond to the grievance in writing.

Step 4. Should the aggrieved employee and the Union considers the decision of the Director unsatisfactory, the Union may, within twenty-one (21) calendar days of receipt of such decision, notify the department director and the Chief of the State Office of Labor Relations of its decision to take the grievance to final and binding arbitration. It is understood the parties may, by mutual agreement, at any time enter into mediation.

Section 3. Rules of Grievance Processing.

A. Time limits of any stage of the grievance procedure may be extended by written mutual agreement of the parties.

B. A grievance not filed or advanced by the grievant within the time limits provided shall be deemed permanently withdrawn as having been settled on the basis of the decision most recently received. Failure on the part of the Employer's representative to answer within the time limit set forth in any step will entitle the grievant to proceed to the next step within time limits provided.

C. An appointed authority may choose a designee to replace any titled position in the grievance procedure, provided that such appointee has full authority to act in the capacity of the person being replaced.

D. The grievance shall be presented in writing using the AFSCME Grievance Form and submitted to the employee(s) immediate Supervisor at Step 1. The written grievance shall contain the following:

1. The name of the grievant (s).

2. The specific contract violation.

3. A complete statement of the grievance and facts upon which it is based.

4. The remedy or correction requested.

E. Those employees desiring to use alternative grievance procedures, legal or quasi-legal processes may not pursue the same complaint under the provisions of this contractual procedure. Similarly, an employee pursuing a grievance under the provisions of this contract may not pursue the same grievance issue under another procedure.

F. In the event of a classification related grievance, the statutory classification appeal route shall be followed wherein the grievance may be submitted to the Board of Personnel Appeals for final resolution. Where a question arises as to whether the matter falls under the jurisdiction of the Board or could possibly be arbitrated, the matter may be referred to the Board for a decision.

Section 4. Rules of Arbitration.

A. Within fourteen (14) calendar days of receipt of the Union's notice of its intent to arbitrate a grievance, the Union shall call upon the Board of Personnel Appeals for a list of five (5) potential arbitrators. The Union will provide the Employer with a simultaneous copy of the arbitration panel request.

B. Each party shall be entitled to strike two (2) names from the list in alternate order and the name so remaining shall be the arbitrator. A coin toss shall determine which party strikes the first name.

C. The arbitrator shall render a decision and that decision shall be final and binding. By mutual agreement, the parties may request a bench decision from the arbitrator, provided the arbitrator is notified at time of selection.

D. Each party shall share equally the cost of the arbitrator. In the event one of the parties wants transcripts from the proceedings of the arbitration, the party requesting the transcripts shall pay all costs. If each party requests a transcript, they shall share equally the cost.

E. The arbitrator may not add to, subtract from, or modify the terms of this Agreement.

ARTICLE TWELVE - COMPENSATION

Section 1. Salaries and Wages. Conditions relative to and governing wages and salaries and extraordinary pay rates are contained in Addendum C of this Agreement, which is attached and by this reference made a part hereof as though fully set forth herein. Employees shall be compensated in accordance with the Pay Plan Rules as promulgated by the state through the Department of Administration.

Subsection A. An employee's anniversary date will not change because of a disciplinary suspension.

Subsection B. It shall be clearly understood that variances in wage rates resulting from negotiations shall not constitute grounds for classification appeals.

Subsection C. There will be similar pay for similar work in each classification of employment. The employer will make a good faith attempt to distribute overtime equally to all employees. Overtime will first be offered to PRN/Pool employees, next to employees in the same job classification who have indicated in writing they wish to be considered for OT; then to qualified bargaining unit employees who have indicated in writing they wishes to be considered for OT direct care shifts. If no employee is available to cover the shift(s) from the above; the employer may require any qualified employee on site to cover the shift on a rotating basis.

Subsection D. Work time will be measured and paid to the nearest one tenth (1/10) of an hour.

Section 2. Provisional Appointment.

Subsection A. Defined: Provisional appointment means a temporary appointment of a permanent employee to fill a position in a classification while the employee assigned to the position is absent (such as sick leave, vacation, leave of absence, etc.).

Subsection B. An employee assigned a provisional appointment shall be paid as follows:

1. If the position is in a classification of a higher salary grade, the employee shall be paid according to the pay plan rules governing promotions.

2. If the position is in a classification of the same or a lower salary grade, the employee shall continue to be paid his/her basic salary rate.

Subsection C. An employee assigned a provisional appointment shall not achieve permanent status in the higher class and upon termination of the provisional appointment shall resume his/her permanent position and salary.

Subsection D. Whenever an employee is assigned added responsibilities and duties of a position with a higher salary grade in addition to his/her normal duties, the employee shall be paid for the time actually worked in the higher salary grade in accordance with the pay plan rules governing promotions.

Subsection E. Provisional appointments must be requested by the employee's supervisor and approved by the department head or one appointed to act in his/her behalf.

Section 3. Overtime. Employees who work in excess of eight (8) hours in any twenty-hour (24) hour period or in excess of forty (40) hours in any work week will be compensated at the rate of one and one-half (1½) times their normal rate of pay for the additional time worked. Overtime rates shall be paid only for actual time worked and in cases where proper approval exists.

Alternate work schedules that are in excess of eight hours in any one twenty-four (24) hour period will be paid at the regular rate of pay except if hours are in excess of forty (40) hours in any work week. All hours that are in excess of forty (40) hours in any work week shall be compensated at time and one-half.

Subsection A. Overtime Defined: Means work authorized and performed in excess of an established work day or work week.

Subsection B. No overtime shall be worked, except in cases of emergency, without the approval and direction of a designated Employer authority outside the bargaining unit.

Subsection C. Overtime shall be segregated and paid to the nearest one tenth (1/10) of an hour.

Subsection D. The Employer will make a good faith attempt to distribute overtime equally to all employees. Overtime shifts will first be offered to pool employees, next to employees in the same job classification who have indicated in writing they wish to be considered for OT; then to qualified bargaining unit employees who have indicated in writing they wishes to be considered for direct care shifts. If no employee is available to cover the shift(s) from the above; the employer may require any qualified employee on site to cover the shift on a rotating basis.

Subsection E. The Union and the Employer are not in favor of overtime and nothing in this section shall be construed as encouraging such procedure.

Subsection F. When computing overtime, holidays, sick leave, or vacation time taken during the work week will be considered as time worked.

Section 4. Hold Over Time. Hold Over Time means time worked by the employee for shifts or partial shifts that immediately follow the employee's regularly scheduled shift and is requested by the Employer either preceding or during the employee's regularly scheduled shift. Such time is not subject to call out provisions.

Section 5. Decedent's Warrant. An employee will complete for his/her personnel file a Form P-3 which legally designates a beneficiary for wages owed and makes possible payment thereof without probate. An employee may revoke and/or change a designation at any time by filing a new designation form or letter.

Section 6. Call-Outs. Each and every call-out will be for a minimum of two (2) hours at one and one-half (1½) times pay. For additional time worked, the employee will be compensated for actual time worked at one and one-half (1½) times pay.

Call-out time means time worked by the employee when called to work by the Employer while in "off duty" status, for shifts or partial shifts that do not immediately follow the employee's regularly scheduled shift and that are not previously scheduled. Call-out time will begin at the time the employee clocks into work.

Section 7. The employer shall provide 2 pair of summer and 2 pair of winter coveralls to those employees performing custodial duties.

ARTICLE THIRTEEN - EMPLOYER RIGHTS

Except as otherwise expressly and specifically limited by the terms of this Agreement, the Employer retains, whether exercised or not, all the lawful, customary, and usual rights, powers, decision making prerogatives, responsibility, functions, and authority connected with or in any way incidental to its responsibility to manage the affairs of the Employer or any part of the Employer. Such rights include but are not limited to the rights established pursuant to Section 39-31-303, M.C.A., as follows:

39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

(1) direct employees;
(2) hire, promote, transfer, assign, and retain employees;
(3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;
(4) maintain the efficiency of government operations;
(5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
(6) take whatever actions may be necessary to carry out the missions of the agency

in situations of emergency;
(7) establish the methods and processes by which work is performed.

ARTICLE FOURTEEN - NO STRIKE/LOCKOUT

Section 1. The Union and the Employer agree that there will be no stoppage of work or lockout during the term of this Agreement.

Section 2. The Union shall have the right to engage in a concerted activity after December 31, 2016, for matters pertaining to wages and benefits in the FY 2018-2019 biennium.

Section 3. However, in the event of any strike or work stoppage the Union shall furnish notice in accordance with 39-32-110, M.C.A.

ARTICLE FIFTEEN - SAVINGS

Should any Article, Section, or portion thereof of this Agreement be held unlawful or invalid by any court or board of competent jurisdiction, such decision shall apply only to the specific Article, Section, or portion thereof directly specified in the decision. Upon issuance of such a decision, the Parties agree immediately to negotiate a substitute for the invalidated Article, Section, or portion thereof.

ARTICLE SIXTEEN - TERM

Section 1. This Agreement shall be effective the first day of July, 2015 and shall remain in full force and effect through the 30th day of June, 2017. Either party shall notify the other in writing at least sixty (60) calendar days prior to the expiration date that they desire to renegotiate this Agreement. If the Union gives such notice, it agrees to notify the Chief of the State Office of Labor Relations in writing of such requested negotiations at the same time such notice is given to the agency. In the event such notice is given, negotiations shall begin not later than thirty (30) calendar days prior to the expiration date.

Section 2. In conjunction with this contract, it is hereby agreed that the Parties will reopen negotiations on applicable economic issues sufficiently in advance of Executive Budget Submittal to insure time for adequate negotiations to take place.

Section 3. Budgets. The Union will present to the program manager and the Department of Public Health and Human Services a copy of their salary increase recommendations and other recommendations which would affect the financial program of the Employer not later than the 1st of July on even-numbered years.

Section 4. This Agreement together with Addendums A and B constitutes the full and complete agreement between the parties.

THIS AGREEMENT is signed and dated this 16th day of August, 2016

FOR: MONTANA CHEMICAL DEPENDENCY CENTER CARE AND SERVICE EMPLOYEES, MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Mike Manion, Chief
State Office of Labor Relations

Richard H. Opper, Director
Department of Public Health and Human Services

Glenda Oldenburg, Division Administrator

FOR: AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO LOCAL 1620

Timm Twardoski, Director
AFSCME Council 9

Cassandra Chambers, President
Local #1620

Kim Criscuolo, Vice President
Local # 1620

PAY SCHEDULE A

JOB CODE	PAY BAND	TITLE	MINIMUM	MIDPOINT	MAXIMUM
131755	5	Training Development Specialist	$15.34/ $31,907.20	$19.18/ $39,894.40	$23.02/ $47,881.60
151414	4	Computer Support Technician	$15.39/ $32,011.20	$19.24/ $40,019.20	$23.09/ $48,027.20
292614	4	LPN	$16.66/ $34,652.80	$20.83/ $43,326.40	$25.00/ $52,000.00
292713	3	Medical Records Technician	$11.28/ $23,462.40	$14.10/ $29,328.00	$16.92/ $35,193.60
311153	3	Psychiatric Aide	$11.92/ $24,793.60	$14.90/ $30,992.00	$17.88/ $37,190.40
372112	2	Custodian	$8.50/ $17,680.00	$10.63/ $22,110.40	$12.76/ $26,540.80
436113	3	Administrative Assistant	$11.46/ $23,836.80	$14.32/ $29,785.60	$17.18/ $35,734.40

ADDENDUM A
Broadband Pay Plan Provisions

This agreement represents the parties' full and complete agreement for all provisions of the Broadband Pay Plan under the term of this contract.

Section 1 . Across the Board Pay Adjustments

All employees covered by this collective bargaining agreement shall receive a $.50 an hour pay increase effective the first day of the first complete pay period that includes January 15, 2016 and a $.50 an hour pay increase effective the first day of the first complete pay period that includes January 15, 2017. The increases shall apply to the employee's base pay.

Section 2. Longevity. All of the calculations are base rates and not inclusive of longevity.

Section 3. Hiring rates. Employees new to state government will typically be hired at the entry for the occupation. In determining a new employee's hiring rate above entry, the Supervisor, or designee, shall consider criteria such as: the employee's job-related qualifications and competencies; existing salary relationships within the job class, band and work unit; department affordability; and the competitive labor market.

Section 4. Training Assignments. The Supervisor or designee may establish written training assignments to enable an employee to gain the additional experience and training required for the job for a period of time not to exceed two years. At the completion of the training assignment, the employee's pay will be set no less than the entry rate of pay for the occupational pay band.

Section 5. Market-based pay: Pay awarded to employees based on comparisons to how other employers compensate employees in similar jobs. Market-based comparisons consider not only base pay, but also other types of compensation and benefits having a definable dollar value. The Department may consider market- based pay adjustments on a case-by-case basis.

Section 6. Competency-based pay: Pay based on an assessment of an employee's job-related competence. The Department may consider competency based pay adjustments on a case-by-case basis.

Section 7.. Results-based pay: Pay awarded to employees or employee teams based on accomplishments. Results-based pay may be awarded for specific outcomes or outputs. The Department may consider results based pay adjustments on a case-by-case basis.

Section 8. Strategic pay: Pay awarded to attract and retain key employees with

competencies critical or vital to achievement of the Department's mission or strategic goals. The Department may consider strategic pay on a case-by-case basis.

Section 9. Situational pay: Pay based on circumstances that occur that are not encountered in either the majority of jobs in state government or jobs used to make market comparisons. It is intended to address difficulties in recruitment and retention. It may be considered when atypical requirements exist in a position, for example, unusual hours, extreme physical demands, or environmental hazards that are causing recruitment and retention problems. The Department may consider situational-based pay on a case-by-case basis.

ADDENDUM B

These rules supersede the previously published policy on sick leave dated 5/27/94.

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2.21.118 ABUSE OF SICK LEAVE (IS HEREBY REPEALED) (History: Sec. 2-18-102 and 2-18-604, MCA; IMP, 2-18-619, MCA; NEW, 1977 MAR p. 1151, Eff. 12/24/77; REP, 1980 MAR p. 2899, Eff. 11/15/80.)

2.21.119 EMPLOYEE LEAVE RECORD (IS HEREBY REPEALED) (History: Sec. 2-18-102 and 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1977 MAR p. 1151, Eff. 12/24/77; AMD, 1978 MAR p. 503, Eff. 4/25/78; REP, 1980 MAR p. 2899, Eff. 11/15/80.)

2.21.120 CLOSING (IS HEREBY REPEALED) (History: Sec. 2-18-102 and 2-18-604, MCA; IMP, 2-18-618, 39-7-203 and 39-7-204, MCA; NEW, 1977 MAR p. 1151, Eff. 12/24/77; AMD, 1978 MAR p. 189, Eff. 2/25/78; REP, 1980 MAR p. 2899, Eff. 11/15/80.)

2.21.121 SHORT TITLE (1) This sub-chapter may be cited as the sick leave policy. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80.)

2.21.122 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Abuse of sick leave" means misrepresentation of the actual reason for charging an absence to sick leave and may include chronic, persistent, or patterned use of sick leave.

(2) "Break in service" means, as provided in 2-18-601, MCA, "a period of time in excess of 5 working days when the person is not employed and that severs continuous employment." A break in service could result from a termination or resignation or could result from an absence of more than 5 working days in a row without an approved leave of absence.

(3) "Continuous employment" means, as provided in 2-18-601, MCA, "working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days." An approved continuous leave of absence without pay exceeding 15 working days does not constitute a break in service.

(4) "Immediate family" means the employee's spouse and any member of the employee's household, or any parent, child, grandparent, grandchild, or corresponding in-law.

(5) "Jurisdiction" means the extent of authority of any state or local government entity within which the limits of authority or control may be exercised. State government is a single jurisdiction.

(6) "Qualifying period" means a 90-calendar day period an employee must be continuously employed to be eligible to use sick leave credits or to be eligible for a lump sum payment upon termination for unused sick leave credits.

(7) "Sick leave" means, as provided in 2-18-601, MCA, "a leave of absence with pay for a sickness suffered by an employee or a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606[, MCA]."

(8) "Sick leave credits" means the earned number of sick leave hours an employee is eligible to use upon completion of the qualifying period.

(9) "Transfer" means, as provided in 2-18-601, MCA, "a change of employment from one agency to another agency in the same jurisdiction without a break in service." (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1985 MAR p. 1237, Eff. 8/30/85; AMD, 1992 MAR p. 2372, Eff. 10/30/92; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.123 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to grant eligible state employees sick leave benefits in accordance with 2-18-618, MCA.

(2) Nothing in this policy guarantees approval of the granting of such leave in any instance. Each request will be judged by the agency in accordance with this policy.

(3) The objectives of this policy are to establish functional uniform procedures for calculating and granting sick leave benefits in accordance with 2-18-618, MCA; provide interpretation required for automation of the payroll system, and ensure compliance with the Montana Maternity Leave Act, 49-2-310 and 49-2-311, MCA and the 1978 amendment to the Civil Rights Act of 1964 (42 USC S 20003, 78 statute 253) banning pregnancy discrimination. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1983 MAR p. 1455, Eff. 10/14/83; AMD, 1985 MAR p. 1237, Eff. 8/30/85; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

Rules 24 through 31 reserved

2.21.132 CONDITIONS FOR USE OF SICK LEAVE (1) An employee may use sick leave credits for:

(a) illness;

(b) injury;

(c) medical disability;

(d) maternity-related disability, including prenatal care, birth, miscarriage, abortion, or other medical care for either employee or child;

(e) parental leave as provided in ARM 2.21.1001 et seq.;

(f) quarantine resulting from exposure to contagious disease;

(g) medical, dental or eye examination or treatment;

(h) necessary care of or attendance to an immediate family member, or at the agency's discretion, another relative, for the above reasons until other attendance can reasonably be obtained; and

(i) death or funeral attendance for an immediate family member or, at the agency's discretion, for another person. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1985 MAR p. 1237, Eff. 8/30/85; AMD, 1992 MAR p. 2372, Eff. 10/30/92.)

2.21.133 ACCRUAL AND USE OF SICK LEAVE CREDITS (1) A permanent, seasonal, or temporary employee is eligible to earn sick leave credits. A short-term worker, as defined in 2-18-101, MCA, is not eligible to earn sick leave credits.

(2) Sick leave credits accrue from the first day of employment.

(3) An employee must be continuously employed for the qualifying period of 90 calendar days to use sick leave.

(4) Leave may not be advanced nor may leave be taken retroactively.

(5) Unless there is a break in service, an employee only serves the qualifying period once.

(6) After a break in service, an employee must again complete the qualifying period to use sick leave.

(7) A seasonal employee's accrued sick leave credits may be carried over to the next season if management has a continuing need for the employee, or paid out as a lump-sum to the employee when the season ends in accordance with ARM 2.21.141.

(8) If sick leave credits are carried over, employment in two or more seasons is continuous employment and can be counted toward the 90-calendar day qualifying period provided a break in service does not occur.

(9) Returning seasonal employees must report for work by the date and time specified by the agency to avoid a break in service.

(10) A person simultaneously employed in two or more positions in the same or in different agencies will accrue sick leave credits in each position according to the number of hours worked. Leave credits will be used only from the position in which the credits are earned and with approval of the supervisor or appropriate authority for that position.

(11) Hours in a pay status paid at the regular rate will be used to calculate leave accrual. Sick leave credits will not accrue for those hours exceeding 40 hours in a work week that are paid as overtime hours or are recorded as compensatory time hours. A full-time state employee shall not earn less than or more than the full-time sick leave accrual rate provided by ARM 2.21.134, except as provided in this rule.

(12) As provided in 2-18-618, MCA, "An employee may not accrue sick leave credits while in a leave-without-pay status."

(13) When an employee who has not worked the qualifying period for use of sick leave takes an approved continuous leave of absence without pay exceeding 15 working days, the amount of time on leave of absence will not count toward completion of the qualifying period. The approved leave of absence exceeding 15 working days is not a break in service and the employee will not lose any accrued sick leave credits or lose credit for time earned toward the qualifying period. An approved continuous leave of absence without pay of 15 working days or less will be counted as time earned toward the 90-day qualifying period.

(14) When an employee who has been laid off elects to maintain sick leave credits, as provided in ARM 2.21.5007, the employee shall not take any accrued sick leave credits. The employee may take those sick leave credits if reinstated or reemployed by the same agency, or another state agency pursuant to the State Employee Protection Act, 2-18-1201, et seq., MCA. The employee may elect to be cashed out at any time at the salary rate the employee earned at the effective date of lay-off. However, the employee shall be cashed out when the employee's rights under the State Employee Protection Act end. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1983 MAR p. 1455, Eff. 10/14/83; AMD, 1985 MAR p. 1237, Eff. 8/30/85; AMD, 1986 MAR p. 103, Eff. 1/31/86; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.134 CALCULATION OF SICK LEAVE CREDITS (1) As provided in 2-18-618, MCA, sick leave credits are "earned at the rate of 12 working days for each year of service" for full-time employees and are prorated for part-time employees.

(2) If an employee is regularly scheduled to work 80 hours or more in a bi-weekly period:

(a) the employee accrues 3.69 hours of sick leave credits a pay period; and

(b) the sick leave credits are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.

(3) If the employee is regularly scheduled to work less than 80 hours in a bi-weekly pay period or works intermittently:

(a) the employee accrues .046 hours of sick leave credits for each hour worked; and

(b) such sick leave credits are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.

(4) Sick leave credits are earned at the end of each bi-weekly pay period. These sick leave credits may not be used until the start of the next bi-weekly pay period.

(5) There is no restriction as to the number of hours of sick leave credits that may be accumulated, nor to the number of accrued sick leave credits that may be used for a bona fide employee illness or disability, provided that the qualifying period has been completed. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82.)

2.21.135 PROHIBITED USE OF SICK LEAVE CREDITS (IS HEREBY REPEALED) (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; REP, 1982 MAR p. 2130, Eff. 12/17/82.)

2.21.136 RATE OF SALARY COMPENSATION (1) An employee on authorized sick leave is entitled to the employee's normal gross salary. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80.)

2.21.137 SICK LEAVE REQUESTS (1) An agency shall establish procedures for application for and approval of sick leave in compliance with requirements of this policy.

(2) The employee's immediate supervisor or appropriate authority may require medical certification of sick leave charged against any sick leave credits. The medical certification must be provided by a licensed physician or, at the agency's discretion, by a licensed practitioner competent to treat and diagnose the particular illness or condition.

(3) Provisions of the federal Family and Medical Leave Act and the Americans with Disabilities Act of 1990 each place limitations on the kinds of information which may be sought when medical certification is required. The information required for medical certification should be job-related and consistent with business necessity. It may indicate a need for the leave, length of the leave and the timing of the leave. Seeking more information than necessary to verify the leave request may violate the ADA. An agency may not inquire into the possible future effects of an employee's "serious health condition," as that term is defined in the FMLA, during the certification process. For example, if a medical certification indicates an employee has cancer, the agency may not ask whether the illness is terminal.

(4) A statement by a licensed physician or, at the agency's discretion, by a licensed practitioner, may also be required to certify that the illness of a family member requires the immediate supervision of the employee.

(5) Medical certification of a maternity related sick leave must be obtained in the same manner and under the same conditions as certification for other sick leave.

(6) The documentation of requests for leave should contain sufficient detail so that improper use of sick leave credits can be discovered and corrected.

(7) The agency may require an employee to be examined by a licensed physician or a licensed practitioner of the agency's choice. A medical examination must be job-related and consistent with business necessity. The agency shall pay the costs of such an examination. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1983 MAR p. 1455, Eff. 10/14/83; AMD, 1994 MAR p. 1407, Eff. 5/27/94.)

2.21.138 SICK LEAVE RECORDS (1) An employee's sick leave credits earned and sick leave credits used shall be recorded by the statewide human resource information system. Agencies not paid through central payroll shall keep their own records.

(2) Sick leave credits used must be recorded to the nearest one-half hour when fractions of hours are used.

(3) Adjustments to an employee's accrual and use totals should be reported to the agency payroll clerk on a bi-weekly basis. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.139 SICK LEAVE ON HOLIDAYS (1) Sick leave taken over a holiday may not be charged to an employee's sick leave for that day. (History: Sec. 2-18-604, MCA; IMP, 2-18-

615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82.)

2.21.140 SICK LEAVE ACCRUAL DURING LEAVES OF ABSENCE WITHOUT PAY (IS HEREBY REPEALED) (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; REP, 1982 MAR p. 2130, Eff. 12/17/82.)

2.21.141 LUMP SUM PAYMENT UPON TERMINATION (1) When an employee terminates employment with an agency, the employee is entitled to cash compensation for unused sick leave credits equal to one-fourth of the compensation the employee would have received if the employee has used the credits, provided the employee had worked the qualifying period.

(2) As required by 2-18-618, MCA, "an employee who receives a lump-sum payment . . . and is again employed by any agency shall not be credited with any sick leave for which the employee has previously been compensated."

(3) The value of unused sick leave is computed based on the employee's salary rate at the time of termination. Payment is the responsibility of the agency from which the employee is terminating.

(4) As provided in 2-18-618, MCA, "accrual of sick leave credits for calculating the lump-sum payment begins July 1, 1971."

(5) Employees retain sick leave credits earned before July 1, 1971, if recorded by the agency prior to that date.

(6) Sick leave credits earned prior to July 1, 1971, can be transferred between agencies, but are not eligible for lump-sum payment when an employee terminates.

(7) Sick leave credits earned prior to July 1, 1971, must be used first.

(8) Upon termination from one position where the employee works in more than one agency, the employee may, at the agency's discretion, transfer leave credits to the remaining position. If the employing agency will not accept the transfer of credits, it is the responsibility of the agency from which the employee is terminating to cash out the employee, as provided in this rule.

(9) If both positions are in the same agency, the agency may choose to either cash out credits accrued to the terminated position or transfer credits to the position the employee continues to fill. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.142 TRANSFERS (1) If an employee transfers between agencies in the same jurisdiction, the employee shall not receive cash compensation for unused sick leave credits.

(2) In such a transfer the receiving agency assumes the liability for the accrued sick leave credits transferred with the employee.

(3) If a break in service occurs during a change in employment between agencies, or the employee moves to another jurisdiction, the employee must receive a lump sum payment for accrued sick leave credits earned after July 1, 1971, and must begin anew the qualifying period at the new agency. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82.)

2.21.143 ABUSE OF SICK LEAVE (1) Misrepresentation of the actual reason for charging an absence to sick leave is cause for dismissal and forfeiture of the lump sum payment.

(2) Chronic, persistent, or patterned use of sick leave may be subject to progressive discipline, pursuant to ARM 2.21.6505 et seq. (See the discipline handling policy, ARM Title 2, chapter 21, sub-chapter 65 or policy 3-0130, MOM.)

(3) Absences improperly charged to sick leave may, at the agency's discretion, be charged to available compensatory time or leave without pay. Annual leave may be used at the mutual agreement of the employee and the agency.

(4) Any charges of sick leave abuse that result in an employee's dismissal and forfeiture of the lump-sum payment are subject to the appropriate grievance procedure. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.144 INDUSTRIAL ACCIDENT (1) An employee who suffers an on-the-job accident may be eligible for workers' compensation benefits. Pursuant to 39-71-736, MCA, an injured worker is not considered to be entitled to workers' compensation benefits if the worker is receiving sick leave benefits, except:

(a) Sick leave may be used and counted toward the required 6-day waiting period. Departments should notify the state workers compensation insurance fund of approved sick leave benefits paid in this situation.

(b) Augmentation of workers' compensation temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits. Departments should notify the state fund of sick leave benefits paid in this situation. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1994 MAR p. 1407, Eff. 5/27/94; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.145 SICK LEAVE SUBSTITUTED FOR ANNUAL LEAVE (1) At the agency's discretion, an employee who experiences an appropriate use of sick leave as defined in this policy while taking approved annual vacation leave may be allowed to substitute accrued sick leave credits for annual leave credits. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1982 MAR p. 2130, Eff. 12/17/82.)

Rules 46 through 54 reserved

2.21.155 CLOSING (1) Provisions of this policy not required by statute shall be followed unless they conflict with negotiated labor contracts, which will take precedence to the extent applicable. (Eff. 11/15/80; Amd. 12/17/82.)

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