West Virginia Division of Personnel

SUPERVISOR'S GUIDE
TO
EMPLOYEE CONDUCT

Employee Relations Section
March 2012

DISCLAIMER

This booklet is intended to be used as a reference and procedural guide to employee conduct. The general information it contains should not be construed to supersede any law, rule, or policy. In the case of any inconsistencies, the statutory and regulatory provisions shall prevail.

This booklet is written with the understanding that the West Virginia Division of Personnel is not engaged in rendering legal services. If legal advice or assistance is required, the services of an attorney should be sought. Supervisors should also refer to policies, rules and regulations as well as consult with the human resources office within his or her respective agency.

For technical assistance concerning specific situations, employees and employers may contact the Division of Personnel's Employee Relations Section at (304) 558-3950, extension 57209.

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EMPLOYEE CONDUCT

The purpose of this publication is to provide general guidance to employers regarding acceptable and unacceptable employee conduct. It may be adapted in part or whole for uses such as developing agency specific policies, an employee handbook, or as a general declaration of expected employee conduct. In addition, links to other relevant DOP resources are provided.

Each agency is encouraged to develop agency-specific policies based upon the general information provided within this guide. However, prior to issuance of any such agency-specific policy, a copy shall be submitted to the Director of DOP who will approve, amend, or disapprove the policy. If approved, each employee should sign a receipt for receiving the policy; see Appendix A.

Employers are obligated to communicate basic principles regarding expected standards of conduct and to ensure State government workplaces are safe, productive, and secure for State employees and the public they serve. Employees are expected to observe a standard of conduct which will not reflect discredit on the abilities and integrity of employees of the State of West Virginia, or create suspicion with reference to employees' capability in discharging their duties and responsibilities. Employees are charged to conduct their duties in a manner to ensure public confidence in the integrity and impartiality of state government.

This document is not all-inclusive and agency management has the authority and discretion to promulgate additional agency-specific policy provided such policies do not diminish these standards and appropriately addresses any unacceptable behavior not specifically mentioned herein.

Attendance and Punctuality

Employees are to report for work fit for duty each day they are scheduled to work, commence work promptly at the scheduled work time, and comply with established procedures for requesting and reporting absences. Employees who fail to demonstrate an acceptable level of attendance shall be subject to appropriate leave restrictions and/or disciplinary action. Attendance and punctuality are essential parts of an employee's job performance and will be considered during performance evaluation. More information regarding this subject is available in the DOP *Supervisor's Guide to Attendance Management*.

Confidentiality

It is crucial that employees exercise appropriate care with confidential information and adhere to all agency requirements governing confidentiality. An individual's privacy is a fundamental right that must be preserved. The preservation and security of personal and medical information of State employees, clients, consumers, and citizens are responsibilities of paramount importance. Breach of confidentiality may result in disciplinary action up to and including dismissal.

Employees may only access information that is necessary in the performance of their official duties. Information regarding employees, clients, consumers, relatives, and citizens is not to be released, except in accordance with established procedures. Accessing such information for non-business purposes including, but not limited to, for profit, personal gain, personal knowledge, grievances, or to share with others is an abuse of authority and breach of confidentiality.

Further, knowingly and improperly disclosing confidential information acquired as a public servant or using confidential information to benefit personal interests, as opposed to the public good, is a violation of the Ethics Act and also a criminal misdemeanor. Therefore, all employees having access to privileged information in any form are required to take proper precautions to avoid any breach of privacy of all confidential information in the custody of the State. Discussion of confidential information not relevant to the business need is strictly prohibited.

Employees are not to disclose or share computer passwords and authorizations to persons not permitted the same level and nature of security or as specified in agency-specific policy. Employees must immediately report any apparent or suspected security breaches to their supervisor.

For more information on privacy, visit the West Virginia State Privacy website at: http://www.privacy.wv.gov.

Criminal Activity, Fraud, Waste, and Abuse

Criminal activity, fraud, waste, and abuse or the concealment of such will not be tolerated. While on duty, if an employee is cited or arrested for breaking the law for any reason, the employee shall report this matter, in writing, to the appointing authority as soon as possible but no later than five (5) calendar days from the date of the arrest or citation. Examples include, but are not limited to, motor vehicle citations, breaking and entering, public intoxication, etc. Furthermore, employees shall report any citations for infractions which occur during the employee's off duty hours if the citation will have an impact upon the employee's ability to perform assigned duties. Failure to report such incidents in accordance with this requirement may result in disciplinary action, up to and including dismissal.

Employees found to have committed or concealed a criminal act or incident(s) of fraud, waste, or abuse will be subject to disciplinary action, up to and including dismissal, depending upon the severity of the offense and the nexus to the employee's job responsibilities.

For the purposes of this document, criminal activity is defined as finding of responsibility for a crime by a court of law or a juvenile court, including, but not limited to, any finding of "guilty except by reason of insanity," "not guilty by reason of insanity," or similarly worded findings. A plea of "guilty" or "no contest" is also considered a conviction for the purpose of this rule unless a subsequent court decision has dismissed the charges. Concealment is an act of omission and is defined as the act of refraining from disclosure; especially an act by which one prevents or hinders the discovery of something.

Discipline

There are standards of acceptable job performance defined by the supervisor or manager, ethical behavior, and professionalism that each State employee is expected to maintain. When employees do not perform at the acceptable standard or when their conduct is an interference, embarrassment, or detriment to the operation of the agency, supervisors are responsible for implementing corrective measures. Corrective action may include, but is not limited to, improvement plans, training, corrective counseling, verbal or written reprimands, and suspension without pay. Demotion is an alternative form of corrective action to be used in limited situations. When implementation of corrective action does not resolve the unacceptable behavior or the severity of the offense dictates, the employee will be subject to dismissal. Generally, each case must be judged on its own merits according to the principles of progressive discipline and like penalties for like offenses. Steps typically observed in the progressive discipline process may be omitted based upon the seriousness of the offense. More information regarding this subject is available in the *Supervisor's Guide to Corrective and Progressive Disciplinary Action*.

Employees who are covered by the Public Employees Grievance Procedure may grieve any disciplinary action.

Dress and Appearance

Employees are to comply with dress code policies established by her or his respective agency. Employees shall dress in a professional manner that is appropriate to the work assignment and that is normally acceptable in professional business establishments. Employees shall wear clothing that is clean and in good repair and are to observe a high standard of personal hygiene. All employees are prohibited from wearing clothing or jewelry or displaying accessories while engaged to work that depict(s) or allude(s) to an obscenity, violence, or sex; advertises alcohol, tobacco, or illegal substances; or conveys political or religious opinions and other unsuitable slogans. Denim jeans of any color or tee shirts are not acceptable attire; however, an appointing authority may make exceptions only in situations where the duties of the position necessitate. Clothing is not to be worn in such a manner as to be inappropriately revealing or to expose undergarments.

Discreet jewelry is acceptable in most circumstances; however, employees are to comply with agency requirements. Body piercings other than in the ears shall not be visible while engaged to work. Employees who work with the public or with individuals in the custody of the State shall conceal all tattoos. Tattoos containing words or images which depict or allude to the items referenced in the previous paragraph shall not be visible while engaged to work. Perfume and/or cologne shall not be excessive or distracting.

Dress and/or appearance standards that are a result of a sincerely held religious conviction should be discussed with a supervisor. Reasonable accommodations shall be considered on an individual basis.

More information is available in the DOP *Agency Dress Codes* policy (DOP-P3).

Drugs and Alcohol

In compliance with the DOP *Drug- and Alcohol-Free Workplace* policy (DOP-P2), employees are prohibited from using, possessing, purchasing, distributing, selling, or having in the body system alcohol, illegal drugs, or controlled substances. The use and possession of controlled substances is to be in compliance with the physician's/practitioners directions. Abuse or misuse of prescription drugs which interfere with performance or orderly conduct of business is prohibited. This prohibition shall apply while employees are engaged in any work-related activity which includes performance of agency business during scheduled work periods, periods of overtime, meal breaks, and/or social occasions having a connection with the job or the agency. When reasonable suspicion exists that an employee has reported to work under the influence of alcohol, illegal drugs, or is impaired due to abuse or misuse of controlled substances including prescription medication, the employee may be subject to medical assessment and/or alcohol and/or drug testing and disciplinary action.

Ethics Act

The West Virginia Governmental Ethics Act provides a code of ethical conduct to guide public officials and public employees and help them avoid conflicts between their personal interests and their public responsibilities. Independence and impartiality of public officials and public employees are essential to maintain the confidence of our citizens in the operation of a democratic government.

The basic principle underlying the standards created by the Ethics Act is that those in public service should use their positions for the public's benefit and not for their own private gain or the private gain of another. Of particular concern is the acceptance of gifts or gratuities, political activity, secondary employment issues, and conflicts of interest including the use of public office for private gain.

The West Virginia Ethics Commission is responsible for educating and advising public servants regarding the Act and for enforcing the Act. Employees who have specific questions or desire more information may contact the Ethics Commission at (304) 558-0664 or visit their website at: http://www.ethics.wv.gov.

Gambling, Betting, and Lotteries

Employees are not permitted to engage in gambling activities while on State-owned property, and while engaged in work activity. Examples of prohibited activities include, but are not limited to, permitting the solicitation of a lottery and selling/purchasing raffle chances unless for charitable organizations as defined in the Solicitation section of this document. Within the applicable provisions of state law, appointing authorities may permit exceptions for students, clients, patients, inmates, residents, etc., entrusted to the care of the State of West Virginia.
For more information contact the Ethics Commission at (304) 558-0664 or visit their website at: *http://www.ethics.wv.gov*.

Harassment and Discrimination

Harassment and discrimination in any form are prohibited in the workplace. This includes, but is not limited to, harassment and discrimination based upon race, color, religion, gender, national origin, age, disability, and protected activity (i.e., opposition to prohibited discrimination or participation in the complaint process) or status explicitly defined as protected under applicable federal and/or State law as well as non-discriminatory hostile workplace harassment (bullying). Such conduct is illegal and forbidden in the employer-employee relationship as well as in the provision of Agency services, goods, etc. Illegal and non-discriminatory hostile workplace harassment will not be tolerated within the workplace and will result in appropriate disciplinary action, up to and including dismissal.

Retaliation against an employee for engaging in a legally protected activity is unlawful and will not be tolerated. Legally protected activity may include, but is not limited to:

a) Filing a Workers' Compensation claim;
b) Reporting an instance of waste or wrongdoing as provided in the Whistle-blower law;
c) Filing a complaint with the Equal Employment Opportunity Office or Commission;
d) Filing a complaint with the West Virginia Human Rights Commission;
e) Filing a complaint with the State and/or federal Department of Labor;
f) Filing a grievance with the Public Employees Grievance Board;
g) Filing a complaint with the Occupational Safety and Health Administration; and
h) Serving as a witness, assisting a complainant or participating in an investigation

Sexual harassment is prohibited by State and federal anti-discrimination laws, including but not limited to, where: (1) submission to such conduct is made a term or condition of employment, either explicitly or implicitly; (2) submission to or rejection of such conduct by an individual is used as the basis for personnel actions affecting such individual; or (3) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Non-discriminatory hostile workplace harassment is a form of harassment commonly referred to as "bullying " that involves verbal, non-verbal or physical conduct that is not discriminatory in nature but is so atrocious, intolerable, extreme and outrageous in nature that it exceeds the bounds of decency and creates fear, intimidates, ostracizes, psychologically or physically threatens, embarrasses, ridicules, or in some other way unreasonably over burdens or precludes an employee from reasonably performing her or his work. Although the scope of The Civil Rights Act of 1964 does not extend to protect employees that are not members of a protected class from unlawful employment discrimination, an employee can still impute liability upon an employer for the infliction of emotional distress if the employer fails to take corrective action when an employee provides notice of nondiscriminatory workplace harassment that has subsequently created a hostile work environment for the employee.

Non-discriminatory hostile workplace harassment involves the repeated unwelcome mistreatment of one or more employees often involving a combination of intimidation, humiliation, and sabotage of performance which may include, but is not limited to:

a) Unwarranted constant and destructive criticism;
b) Singling out and isolating, ignoring, ostracizing, etc.;
c) Persistently demeaning, patronizing, belittling, and ridiculing; and/or,
d) Threatening, shouting at, and humiliating particularly in front of others.

Employees who believe they have been harassed should report the incident immediately to the agency's Equal Employment Opportunity (EEO) Counselor or their immediate supervisor. A list of agency EEO counselors are available at the State of WV Equal Employment Opportunity Office website at http://www.eeo.wv.gov.

Employees have the right to file a grievance through the Public Employees Grievance Board or file harassment complaints with the West Virginia Human Rights Commission, the federal EEO Office, or pursue civil action. Nondiscriminatory hostile work environment claims are not within the jurisdiction of the EEO office. Employees must address such complaints through their manager/ supervisor, the public employees' grievance procedure, or litigation.

Reports of sexual harassment may be made and complaints shall be handled in accordance with DOP policy DOP-P6, *Prohibited Workplace Harassment*.

Health and Safety/Workplace Security

Employees have a responsibility to take precautions to protect themselves and co-workers from unnecessary hazards to health and safety. Employees shall comply with the required use of safety equipment and report any hazardous or unsafe working condition to their immediate supervisor. In compliance with DOP policy DOP-P15, *Workplace Security*, the possession, by an unauthorized individual, of any firearm or dangerous/deadly weapon or the exhibition of threatening behavior is prohibited. If an unsafe act or situation is observed or if an employee is injured, a supervisor must be notified immediately and an incident report must be made.

Information Technology Resources

In compliance with West Virginia Office of Technology policy, only minimal personal use of State-provided information technology resources is permitted and should not interfere with the legitimate business of the State. Furthermore, personal use of electronic resources is limited to break periods. Employees do not have any expectation of privacy in the use of State-owned or provided computers or Internet and electronic mail (e-mail). E-mail and Internet access are components of the State's communication systems. They are provided by the State to assist employees in the performance of their assigned job duties or work assignments. These systems and their contents are the property of the State. As such, the State reserves the right to retrieve computer records and review usage history for legitimate business reasons including, but not limited to, recovery of system failures, State operational standards, investigations of alleged wrongful acts, location of lost data, and to investigate employees' failure to comply with agency e-mail and Internet use policies.

Solicitations and transmission of political, obscene, profane, harassing, discriminatory, derogatory, or intimidating material or messages are specifically prohibited. The State's communication systems shall not be used in such a manner to violate any policy, rule, or law.

More information regarding this subject, including all of the Office of Technology policies, is available on the Office of Technology's website at http://www.technology.wv.gov.

Insubordination

Employees are expected to adhere to reasonable and legal directives of their supervisor. The refusal of an employee to perform any lawful directive by his or her supervisor is insubordination and cause for disciplinary action. However, refusal to obey a superior's order based upon a good faith belief that the order violates a law, regulation, or policy, may not be considered a willful refusal to obey, provided the employee informs the supervisor or her or his manager of such belief. An employee is expected to respect authority and does not have the unfettered discretion to disobey or ignore clear instructions. Insubordination encompasses more than an explicit order and subsequent refusal or intentional failure to carry it out. It also involves a flagrant or willful disregard for implied directions of an employer. Choosing to perform other work or refusing or failing to perform work as assigned or as directed by a supervisor may be considered insubordination.

Nepotism

As provided in the DOP *Administrative Rule* (143CSR1), no appointing authority shall influence or attempt to influence the employment or working conditions of her or his immediate family. Immediate family consists of the parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, step-parents, , step-brothers, step-sisters, stepchildren, foster children, individuals in an in loco parentis relationship, and individuals in a legal guardianship relationship. It is the responsibility of the appointing authority to administer the employment of relatives of any agency employee in a consistent and impartial manner.

No employee shall directly supervise a member of her or his immediate family. More specifically, no employee shall review or audit the work of a member of her or his immediate family, or take part in discussions concerning employment, assignment, compensation, discipline or related matters involving a member of her or his immediate family. In the event that an individual, through marriage, adoption, etc. is placed in a prohibited business relationship with a member of her or his immediate family, the situation shall be resolved within thirty calendar days. Resolution may be made by transfer, reassignment, resignation, etc. of one of the involved employees or by other accommodation which protects the interests of the public.

The West Virginia Ethics Commission defines nepotism as favoritism shown or patronage granted to relatives or close friends without consideration of other applicants or qualifications required to perform the job. The Ethics Act provides that a public official or public employee may not knowingly and intentionally use her or his office or the prestige of her or his office for her or his own private gain or that of another person. The Ethics Commission has determined that nepotism is private gain and is, therefore, a violation of the Act.

News Media and Publicity

To ensure that each agency speaks with one informed voice on the many sensitive matters that arise, no news media release concerning official State business is to be issued by any employee unless first approved by the individual designated by the appropriate authority to respond to such matters. All requests for information or documents from the news media should be referred to, and all correspondence to the news media must be mailed from, the designated authority.

Off-duty Conduct

Employees engaging in lawful or unlawful unacceptable activity or behavior while not at work may still be subject to disciplinary action at work if the misconduct:

- is substantial and not frivolous, trivial or inconsequential;
- reflects adversely on the employee's ability to do his or her job;
- impairs efficient operation of the employing agency; and,
- bears substantial relationship to duties directly affecting rights and interests of public.

As provided in the Criminal Activity, Fraud, Waste and Abuse section of this document, employees shall report any citations or arrests which occur during the employee's off duty hours if the citation will have an impact upon the employee's ability to perform assigned duties.

Off-duty conduct involving exercise of free speech in publically criticizing the employer is acceptable only if the criticism is in regard to a matter of public rather than personal concern. For example, complaining about a personal work schedule would not constitute a matter of public concern; a matter of public concern would be bringing to the public's attention concerns such as a wrongdoing or violation of law by the employer. Whether an employee's speech addresses a matter of public concern must be determined by the content, form and context of a given statement. The West Virginia Whistle-blower Law protects public employees against discharge, discrimination, or retaliation when they, in good faith, report any instances of waste or wrongdoing.

Political Activity

The federal Hatch Act (5 U. S. C., Chapter 15) restricts the political activity of individuals principally employed by State or local executive agencies who perform duties in connection with programs financed in whole or in part by federal loans or grants regardless of the source of salary or merit system coverage. In addition, State law contains restrictions on the political activity of State employees. Employees subject to political activity laws continue to be covered while on annual or sick leave, leave without pay, or administrative leave. Any classified employee in a position not connected with a federally funded activity who becomes a candidate for any permitted paid public office shall be placed on a leave of absence without pay for the period of

such candidacy, commencing upon the filing of the certificate of candidacy.

In compliance with W. Va. Code, State classified employees **ARE** permitted to do the following:

- Serve as a poll clerk or worker
- Be a candidate for or serve as a delegate to any state or national political party convention
- Voluntarily campaign for a candidate or party during non-work time, off of State property, and without use of State supplies or equipment within the provisions of Election Guidelines and law, so long as they are not paid a fee other than actual expenses incurred
- Voluntarily sell tickets to political affairs to individuals other than employees of the classified services during non-work hours
- Voluntarily erect campaign signs on private property, as long as property is not used as State office or official office site by the State
- Voluntarily attend political dinners, rallies, and dances
- Voluntarily serve on campaign committees for a candidate, so long as not receiving compensation for service
- Be a candidate for paid local partisan or non-partisan elective office (except court of record) by taking a leave of absence commencing with filing date
- Voluntarily make a monetary contribution to a political party or candidate not to exceed limitations established by law
- Voluntarily display campaign stickers, posters, etc. on a personal vehicle at such times as vehicle is not being utilized for County Health Department or State business
- Wear campaign buttons, display bumper stickers or wear apparel with political logos or endorsements during no-work time off State property, and out of State issued uniforms
- Be a candidate for unpaid non-partisan local or State office or unpaid partisan local office. A leave of absence is not necessary to be a candidate for an unpaid elective office permitted by statute
- Campaign for, hold elective office in, or membership in political clubs or organizations

In compliance with W. Va. Code, political activity State classified employees **ARE NOT** permitted to do includes, but is not limited to, the following:

- Sell tickets to political affairs to employees of the classified service
- Serve as a campaign financial agent or treasurer for a political committee or candidate
- Be a candidate for any partisan or non-partisan national, State paid public office, or court or record, including local
- Be a member of any national, State, or local committee of a political party
- Hold any paid elective or appointive office
- Solicit or receive any assessment, subscription, or contribution from employees in the classified service
- Use any official authority or influence to interfere or influence an election or

nomination for office

- Post or distribute campaign literature in a State office building or during work hours. This includes employee organization bulletin boards
- Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, organization, agency, or person for political purposes
- Wear apparel with political logos or endorsement or wear campaign buttons during work hours if their position requires they be observed by or be in contact with the public or wearing State uniform or insignia
- Organize or conduct political rallies or events

Information regarding additional restrictions on political activity for selected state employees may be viewed on the DOP website.
For clarification or additional information concerning political activities of State employees, specific inquiries can be made by contacting:

West Virginia Division of Personnel, Employee Relations Section
Telephone: (304) 558-3950, extension 57209

Because of the numerous criteria governing lobbying activities, employees are urged to call the West Virginia Ethics Commission at (304) 558-0664 for answers to specific questions before engaging in any lobbying activity.

Romantic Fraternization

Romantic fraternization between a supervisor and subordinates in a direct reporting relationship and between any employee and a client, patient, inmate, or resident whom the employee serves is prohibited, including, but not limited to: dating; romantic e-mails; adult subject jokes, cartoons, e-mails and internet sites; and participating in a romantic/intimate relationship. A romantic relationship between supervisor and subordinate is the seed of nepotism and, as such, may lead to a violation of the DOP *Administrative Rule* (143CSR1) and/or the Governmental Ethics Act. Such a relationship can result in decreased employee morale and claims of third-party discrimination; mostly it is just bad business. Prior to the establishment of an agency-specific policy regarding this topic, by a department, division or governmental sub-unit under the jurisdiction of DOP, such policy must be submitted to the Director of DOP for review and approval.

Secondary Employment/Certain Volunteer Activity

As provided in DOP policy DOP-P21, *Secondary Employment/Certain Volunteer Activity*, employees are to discuss current or planned secondary employment/volunteer activity with their supervisor. Generally, employees may hold other employment or participate in volunteer activity as long as it does not interfere or conflict with their primary State employment. However, other employment/volunteer activity that would result in a conflict of interest or interfere with primary State employment cannot be approved. Employees may not hold paid elective public office while employed in a classified position.

Smoking in the Workplace

The working environment should present no unnecessary risk of physical harm or discomfort from environmental tobacco smoke. The State must ensure the right to a smoke-free environment for each State employee and the public as they transact business with or receive service from the State. Applicants, clients, and visitors should not be exposed to cigarette, including e-cigarettes, or any other environmental tobacco smoke. Smoking in the workplace is restricted in compliance with DOP policy DOP-P1, *Smoking Restrictions in the Workplace*, and county ordinances.

Receptacles for extinguishing and disposing of tobacco products are provided in designated outdoor smoking areas. Littering in the State of West Virginia is a crime punishable by fine and/or sentence to perform community service at the discretion of the court. Therefore, employees observed improperly extinguishing or disposing of tobacco products on State property may be subject to such penalties if issued a citation by proper authority, as well as disciplinary action.

Solicitation

The State of West Virginia does not permit individuals or organizations to solicit donations, distribute literature, sell merchandise or hold events in work areas owned by the State, however, solicitation may be permitted in non-work areas such as lobbies with prior authorization by building/facility administrator or Director of General Services. Provided that requests for donations to or selling of raffle chances for charitable organizations, defined as non-profit organizations approved by the West Virginia State Employees Combined Campaign or Community Shares of West Virginia and registered with the Secretary of State, shall be permitted. Solicitation includes, but is not limited to: distributing literature or information; product sales regardless of source or beneficiary; sale of fundraising items sponsored by churches, schools, fraternal organizations, athletic organizations, booster organizations, etc.; and requests for charitable donations to non-profit organizations.

Employees may only participate in solicitation activities whether selling, buying, or obtaining information in authorized areas during break, meal, and non-work hours and are not permitted to use office supplies, equipment, or resources for such activity. Furthermore, employees are not at any time to engage in prohibited political activity while in any room or building occupied for the discharge of official duties by any officer or employee of the State of West Virginia. This statement includes electronic transmissions and telephone solicitation whether originated by employees or non-employees. The State of West Virginia may prohibit the solicitations, distribution and posting of materials on or at State property by any employee or non-employee, except as authorized by W. VA. CODE §29-6-26.

Surveillance

Employees are not permitted to create audio or video recordings of conversations, meetings or conferences without prior supervisory approval and the approval of the parties being recorded. Such restriction does not apply to open public meetings. Employees discovered making such recordings will be subject to disciplinary action, up to and including dismissal. Exceptions may be made with prior approval for employees who present medical certification of the need to use a recording device as a reasonable accommodation.
Use of video surveillance and equipment, i.e., cameras, mobile phone cameras, personal digital assistant cameras, video recorders, etc., is strictly prohibited in areas where there is an expectation of privacy or where confidential information may be copied and/or transmitted. Cameras of any type may be prohibited by an appointing authority in restricted areas. Subjects who are photographed must give written permission in advance, unless authorized by work rule, policy or statute. Video conferencing, web conferencing, and audio conferencing equipment is to be used for business purposes only and misuse will not be tolerated.

The above prohibitions do not apply to any federal, State, or local government security or law enforcement personnel, or other employee (e.g., Investigator) who, because of the nature of her or his work, is duly authorized by her or his appointing authority to utilize surveillance and recording equipment while engaged in her or his official capacity.

Telephone Use

Employees are to limit personal telephone calls while at work and such calls are to be made or received primarily during scheduled break periods, however, there may be times when an employee needs to use the State telephone service for personal business or emergency situations. Such calls may be made during work time when necessary but should be of limited occurrence and duration and should be conducted in non public areas. If a personal long distance telephone call is made using state equipment, a personal calling card/credit card must be used or the call must be a collect call.

Use of mobile telephones to place or receive personal calls is to be limited to scheduled break periods or emergency situations. Employees are not to interrupt the orderly conduct of business to accept or place personal mobile telephone calls. While personally-owned mobile phones are not State-owned equipment, their excessive use is disruptive to employee efficiency and business operations. Each agency has the authority to regulate the use of mobile phones during work hours. State-owned mobile telephones may be used for personal purposes in compliance with agency-specific policy and on a limited basis and excessive use will not be tolerated. Such personal use shall only be permitted if no cost to the State is incurred. Mobile telephones are not to be used while operating a vehicle when engaged in any work-related activity during scheduled work hours, meal breaks, and/or social occasions having a connection with the job or the agency.

Mobile telephone cameras are not permitted to be used in areas where there is an expectation of privacy or where confidential information may be copied and/or transmitted. Further, an appointing authority may prohibit the possession of mobile telephone cameras in restricted areas.

Theft

The cooperation of each employee is imperative to avoid theft at the work site. As a precautionary measure, employees are responsible for ensuring that State supplies, equipment, and personal property are properly secured and should refrain from bringing excessive amounts of money or personal valuables to work. Employees will not be reimbursed for stolen or damaged personal property. Any apparent or suspected incidents of theft or suspicious behavior are to be reported immediately to a supervisor.

Use of Equipment, Supplies, and Services

Employees are to use State-owned equipment, supplies, and services in a safe and efficient manner and for business purposes only. Employees are prohibited from using of official mailing addresses, mailrooms, facilities and mailroom staff for the receipt or mailing of personal mail and packages. Employees are to use their positions in the public service for public benefit and not for their own personal gain or the private gain of another. Equipment should be kept clean and in good working condition. Unsafe working conditions or equipment should be reported immediately. Employees are responsible for all State equipment and supplies issued to them. All such items must be surrendered upon request.

Workplace Behavior

While on duty, meal breaks, travel, and/or social occasions having a connection with the job, employees shall not:

a) Engage in intimidating and/or threatening behavior;
b) Engage in sexual innuendo such as sounds, expressions, gestures, etc.
c) Use foul or abusive language;
d) Make disrespectful, humiliating, insulting or degrading comments to or about others;
e) Engage in inappropriate public displays of affection;
f) Make individuals the subject of practical jokes, pranks, gags, or ridicule; or
g) Engage in any behavior that is disruptive to orderly operations; or
h) Sleep while on duty unless specifically authorized by the appropriate authority.

The foregoing list is by no means an all inclusive list. Employees are not to engage in such behavior when dealing with any individual including but not limited to coworkers, customers, clients, patients, consumers, vendors, citizens etc. When responding to inappropriate behavior, agencies must take into consideration the subjective nature of such offenses. The behavior must be evaluated based upon what would be considered offensive to a reasonably prudent person.

Workplace Searches

As a public employer, State agencies may open and inspect public properties for a work-related purpose as employees do not have any expectation of privacy in the use of State-owned equipment or properties. Additionally, based on a reasonable, good faith, objective suspicion of a present danger or concealment of alcohol, illegal drugs, controlled substances, prohibited weapons, or stolen property an agency may search not only an employee's work area, locker or desk, but also personal property which may include a briefcase, purse, lunch box, backpack, or car while on the employer's premises. Only under compelling circumstances should an employee's person or clothing be searched. Advice of counsel is recommended prior to any search of an employee's person or clothing. When possible, searches will be coordinated with the Protective Services Division of Military Affairs and Public Safety. For more information contact Protective Services at 304-558-9911.

RELATED TOPICS

Employee Personnel Records

Each covered employee has a personnel file at their agency of employment and also a personnel file at DOP. The agency personnel file generally contains employment history; performance appraisals; job applications; education credentials and certifications; correspondence regarding employment change of status; discipline and commendations; training records; benefit enrollment forms; and tenure within the agency. Employees who wish to review their agency file should contact the human resources or payroll office within her or his agency. Medical information, Employment Eligibility Verification Forms (Form I-9), Human Rights complaints, Equal Employment Opportunity complaints, and grievance records are to be maintained in separate files at the agency.

The personnel file maintained at DOP contains information regarding not only the employee's position with the current employer, but also all covered employment with the State of West Virginia. This information typically includes applications, examination scores, training records, and change in status records. This file is not considered the official personnel file as it does not contain most of the employment information maintained in the agency's personnel file. Employees who wish to review this personnel file should contact DOP at (304) 558-3950, extension 57285 to obtain information on the review and identity verification procedure.

Employees should report changes in name, address, telephone number, marital status, or number of dependents to her or his agency human resources or payroll offices as soon as possible. Promptly reporting these changes will keep personnel files current and will prevent delays in processing important tax and benefit information. Employees should keep all information regarding beneficiaries for retirement and insurance purposes current as well. Failure to keep beneficiary status current may result in loss of coverage.

Employee Referral Program

The Employee Referral Program provides a link to independent, off-site professionals who offer treatment or counseling to employees who may need special assistance with problems that affect their personal lives and job functioning. The program brochure lists professionals who offer assistance with issues involving family-child relationships, marital problems, financial difficulties, emotional distress, alcohol and drug abuse, and other areas of difficulty. Costs to the employee for participation in such programs are based upon the individual's health insurance coverage. Employees with State insurance should contact the Public Employees Insurance Agency at (304) 558-7850, or 1-888-680-7342, regarding coverage and may contact her or his agency human resources office regarding other employee assistance alternatives.

For a copy of the employee referral brochure, please see your supervisor or call DOP at (304) 558-3950, extension 57204. Additional information regarding the Employee Referral Program is available on DOP's website at http://www.state.wv.us/admin/personnel/classes/erp/refbook.pdf.

Grievance Procedure

Employees with concerns regarding working conditions or any aspect of employment should discuss the situation with their supervisor. Every attempt should be made to resolve problems at the lowest administrative level possible. However, if an employee is faced with a situation that cannot be resolved informally, he or she may initiate a formal grievance through the Public Employees Grievance Procedure administered by the Public Employees Grievance Board. The grievance system provides employees with a three-tier process to have concerns considered fairly, and without fear of reprisal.

For assistance with the grievance process, employees may contact the Employee Relations Section of DOP at (304) 558-3950, extension 57209. Employees may also contact the Public Employees Grievance Board at (304) 558-3361, toll free at (866) 747-6743, or visit their website at www.pegboard.state.wv.us.

RESPONSIBILITIES

It is suggested that employers make it the responsibility of each supervisor and/or manager to:

a) Implement and distribute a copy of an agency-specific policy and the Employee Conduct Acknowledgment Form (Appendix A) to each current employee and to new employees during orientation

b) Submit the signed acknowledgment form for all employees to the agency human resources office to be placed in the employee's agency personnel file

c) Enforce the provisions of agency-specific policy and administer appropriate disciplinary action for any violation

d) Report to superior and agency human resources office immediately any violation of policy, rules, regulations, or statutes observed or made aware of

REFERENCES

a) West Virginia Division of Personnel *Administrative Rule*, W. VA. CODE R. §143-1-1 *et seq*.

b) West Virginia Division of Personnel Policy DOP-P2, *Drug-and Alcohol-Free Workplace*

c) West Virginia Division of Personnel Policy DOP-P15, *Workplace Security*

d) West Virginia Division of Personnel Policy DOP-P21, *Other Employment/Volunteer Activity*

e) West Virginia Division of Personnel Policy DOP-P1, *Smoking Restrictions in the Workplace*

f) West Virginia Division of Personnel Policy DOP-P6, *Prohibited Workplace Harassment*

g) W. VA. CODE §3-8-1 *et seq*., §5-11-1 *et seq*., §5A-8-21, §6-10-1, §6B-1-1, §6C-1-1, §6C-2-1 *et seq*. §17-2A-5, §18-10A-1, §21-3-1, §21-3-17, §21-3-20, §23-5A-4, §29-6-20, §52-3-1, §61-6-9, §61-7-14, and §62-10-3

h) Title VII of the U.S. Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)

i) Hatch Act (5 U. S. C., Chapter 15 – Political Activity of Certain State and Local Employees)

APPENDIX A

It is suggested that an acknowledgement form affirming receipt be required when implementing and distributing a policy affecting employee working conditions. Such a requirement is often beneficial when disciplining an employee for violation of the policy. The following is a sample acknowledgement form:

EMPLOYEE CONDUCT POLICY

EMPLOYEE ACKNOWLEDGMENT FORM

I, _____, certify that I have received a copy of the _____ policy.

I agree to abide by the terms of the policy and I am aware that upon any violation of this policy, I will be subject to disciplinary action, up to and including dismissal.

My signature acknowledges my receipt of the policy and my understanding of its contents. My signature does not indicate that I agree with the content of the policy.

_____
Employee's Name (Print)

_____
Employee's Signature

_____
Date Signed

TO BE COMPLETED BY SUPERVISOR

I, _____, certify that I have discussed with and provided the above listed employee a copy of the West Virginia Division of Personnel Employee Conduct Policy.

_____ _____
Supervisor's Name (Print) Supervisor's Signature

_____
Date Signed

(Original form to be submitted to the agency human resources office and placed in the employee file.)