

**PLEASANT VALLEY RECREATION & PARK DISTRICT  
ADMINISTRATION OFFICE – CONFERENCE ROOM  
1605 E. BURNLEY ST., CAMARILLO, CALIFORNIA**

**PERSONNEL COMMITTEE  
AGENDA**

**Wednesday, September 27, 2023  
3:00 pm**

- 1. CALL TO ORDER**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC/COMMITTEE COMMENTS**
- 4. REVIEW DRUG POLICY**
- 5. REVIEW BEREAVEMENT LEAVE**
- 6. CLOSED SESSION**
  - **CONFERENCE WITH LABOR NEGOTIATOR** - The Personnel Committee will conduct a closed session, pursuant to Government Code section 54957.6, with the General Manager, Administrative Services Manager, Human Resources Specialist, and District Counsel, the District's negotiators, regarding labor negotiations with: (a) Service Employees International Union, Local 721, representing the District's employees, and (b) all other unrepresented employees.
- 7. ORAL DISCUSSION**
- 8. ADJOURNMENT**

**Note:** Written materials related to these agenda items are available for public inspection in the Office of the Clerk of the Board located at 1605 E. Burnley Street, Camarillo during regular business hours beginning the day preceding the Committee meeting.

**Announcement:** Should you need special assistance (*i.e.* a disability-related modification or accommodations) to participate in the Committee meeting or other District activities (including receipt of an agenda in an appropriate alternative format), as outlined in the Americans With Disabilities Act, or require further information, please contact the General Manager at 482-1996, extension 114. Please notify us 48 hours in advance to provide sufficient time to make a disability-related modification or reasonable accommodation.

**PLEASANT VALLEY RECREATION AND PARK DISTRICT  
STAFF REPORT / AGENDA REPORT**

**TO: PERSONNEL COMMITTEE**

**FROM: MARY OTTEN, GENERAL MANAGER**  
**By: Kathryn Drewry, Human Resources Specialist**

**DATE: SEPTEMBER 27, 2023**

**SUBJECT: REVIEW UPDATED DRUG AND ALCOHOL POLICY**

**BACKGROUND**

AB 2188 amends the California Fair Employment and Housing Act (FEHA) to generally prohibit an employer from discriminating against an employee or applicant because of the employee's or applicant's cannabis use off the job and away from work. The change to the law is significant. AB 2188 applies to an employer with five (5) or more persons but does not apply to nonprofit religious associations and nonprofit religious corporations. AB 2188 becomes operative on January 1, 2024.

AB 2188 makes it unlawful for a covered employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the discrimination is based upon any of the following:

- The person's use of cannabis off the job and away from the workplace; or
- An employer-required drug-screening test has found the person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

AB 2188 does not permit an employee to possess, be impaired by, or use cannabis on the job. As such, it appears covered employers may continue to enforce any policies they may have prohibiting employees from possessing, being impaired by, or using cannabis while working. Presumably, if an employee smokes or consumes cannabis out of work, and arrives to work impaired, that conduct would not be protected by AB 2188.

AB 2188 also does not affect the rights or obligations of an employer to maintain a drug- and alcohol-free workplace under California Health and Safety Code Section 11362.45, or by federal law or regulation.

AB 2188 does not preempt state or federal laws and regulations requiring applicants or employees to be tested for controlled substances as a condition of employment, for the employer to receive federal funding or federal licensing-related benefits, or to be able to enter into a federal contract.

AB 2188 also expressly allows employers to make employment-related decisions based on tests that apply to current impairment, in particular scientifically valid pre-employment drug screening conducted through methods that do not screen for non-psychoactive cannabis metabolites, such as those that test for tetrahydrocannabinol (THC).

### **ANALYSIS**

District staff worked with attorney Joan Pugh Newman at Alshire & Wynder to ensure that our current drug policy reflects the changes in AB 2188. While reviewing the document it was determined that the language PVRPD used in the Drug & Alcohol Use Policy was not in line with current guidelines and recommendations.

### **FISCAL IMPACT**

There is no fiscal impact at this time.

### **RECOMMENDATION**

It is recommended the Personnel Committee review the attached Drug & Alcohol Use policy.

### **ATTACHMENTS**

- 1) Drug & Alcohol Use Policy (Redline)
- 2) Drug & Alcohol Use Policy (Clean)

## J. Drug and Alcohol Abuse Policy

It is the intention of this policy to help eliminate substance abuse and its effects in the workplace. The presence of drugs and alcohol on the job, and the influence of these substances on employees during working hours, are inconsistent with this objective. ~~While the District has no intention of intruding into the private lives of its employees, unless it is for legitimate District reasons, i~~ nvolvement with drugs and alcohol, whether on or off the job, can take its toll on job performance and employee safety. Employees must be able in a condition to perform their duties safely and efficiently, in the interests of their fellow workers and the public as well as themselves. ~~The presence of drugs and alcohol on the job, and the influence of these substances on employees during working hours, are inconsistent with this objective.~~

~~Furthermore, t~~ he use of prescription drugs and/or over-the-counter drugs also may affect an employee's ability safely and effectively to perform their job ~~performance and may seriously impair them.~~ If an employee is taking a drug or medication, whether or not prescribed by a physician, which may adversely affect their ability to perform work in a safe or productive manner, they are required to report such use to their Supervisor. ~~This includes drugs which are known or advertised as possibly affecting judgment, coordination or other senses, including those which may cause drowsiness or dizziness, and including both prescription and non-prescription drugs and medications.~~ The employee's Supervisor, in conjunction with the Administrative Services Department, will then engage in the interactive process with the employee to determine whether they will be allowed to remain at work, and whether any work accommodations may be ~~restrictions are~~ appropriate.

Employees who think they may have an alcohol or drug usage problem are urged to voluntarily seek confidential assistance from the Employee Assistance Program. [NOTE: Can we include here the contact information for the EAP?] ~~While the District will be supportive of those who seek help voluntarily, the District will be equally firm in identifying and disciplining those who continue to be substance abusers and do not seek help or continue substance abuse even while enrolled in counseling or rehabilitation programs.~~

Certain S ~~supervisors and managers are~~ may be trained [NOTE: I advise that all supervisors receive this training.] to recognize symptoms of impairment ~~abusers and become involved in this control process.~~

Alcohol or drug abuse is ~~will not be~~ tolerated, and disciplinary action, up to and including termination, will be imposed ~~used~~ as necessary and appropriate to achieve a safe and productive workplace ~~this goal.~~

This policy provides guidelines for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of the District managers and employees in this regard. ~~To that end, t~~ The District's goal is ~~will act~~ to eliminate any ~~substance abuse, or any other conduct or factor, (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job)~~ which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or damage to the District's reputation. ~~All persons covered by this policy~~ [NOTE: Employment policies should cover only employees. If we have others (e.g.,

consultants, volunteers, etc.) that we wish to inform about the District's drug and alcohol free workplace, that should be in a separate document provided to those individuals.] Employees should be aware that violations of the policy may result in discipline, up to and including termination.

In recognition of the public service responsibilities entrusted to the employees of the District, and that drug and alcohol usage can hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the District.

**1. Policy[NOTE: As this entire section beginning with "I" is the "policy," consider renaming this section to, e.g., "prohibition of drugs and alcohol."]**

It is District policy that employees shall not be under the influence of, or use, or in possession, of, alcohol or drugs while on District property, at work locations, or while on duty or subject to being called to duty or standby, and that employees shall not sell or provide drugs or alcohol to any other employee or person while on duty or on standby duty. [NOTE: Consider including specific exceptions for, e.g., one employee giving a co-worker an aspirin, or District-sponsored events at which alcohol may be served. Let's discuss whether it would be useful to add this language.]

While use of validly prescribed medications and drugs in conformance with prescribed directions may does not necessarily violate this policy per se, failure by an employees must to notify their/his/her Supervisor, before beginning work, when they are taking medications or drugs which could foreseeably possibly interfere with the safe and effective performance of duties, or the operation of District equipment, can result in discipline up to and including termination. In the event there is a question regarding an employee's ability to safely and effectively to perform assigned duties while using such medications or drugs, medical clearance from a qualified physician may be required.

[NOTE: The concept of workplace searches is broader than just the alcohol/drug context, and so should be in a separate, stand-alone policy.] The District reserves the right to search its premises and property, including its parking lots, and to search any personal property brought onto District premises, without employee consent, all areas and property in which the District maintains control or joint control with the employee. "Right to search, when utilized, shall be preceded with notice to the employee of his/her right to representation and to be present during the search unless it is an emergency, or the District deems it is not practical to have the employee present." Otherwise, the District may notify appropriate law enforcement agencies that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the District. [NOTE: Where does the quoted language come from? If this is an MOU provision, the District would, of course, be bound by it. Otherwise, I am not aware of any legal obligation for an employer to provide advance notice, and right to representation, in connection with a search of its premises.]

Employees are expected Refusal to immediately submit to an alcohol and/or drug test analysis when requested by District management or law enforcement personnel, or refusal to

~~submit to a search of personal properties if requested by law enforcement personnel, may constitute insubordination and be grounds for discipline up to and including termination.~~

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be ~~detained for a reasonable time until he or she can be~~ safely transported from the work site.

~~The District is committed to providing reasonable accommodation to those employees whose drug or alcohol problem classifies them as handicapped under federal and/or state law. [NOTE: I expect the Manual is already includes a broader statement about the District's commitment to providing reasonable accommodation generally.]~~

The District has ~~[contracted with? or makes available to employees?]~~ established an Employee Assistance Program (EAP) to assist those employees who ~~voluntarily~~ seek help for alcohol or drug problems. Employees should contact their Supervisors or ~~the~~ Administrative Services Department for additional information.

## **2. Application [NOTE: Consider renaming this section to "definitions."]**

~~This policy applies to all employees and unpaid persons whose actions can serve to place themselves or employees at risk, cause poor employee morale, or damage the District's reputation. This policy applies to alcohol and drugs, including all substances, drugs, or medication, whether legal or illegal, which could impair an employee's ability to effectively and safely perform the functions of the job. [NOTE: See Related Note above re: who is covered by this policy.]~~

For purposes of this ~~Section~~Policy, the following definitions shall apply:

“Abuse of any legal drug” means the use of any legal drug, including prescription drugs, (a) ~~in a manner for any purpose~~ other than the purpose for which it was prescribed or manufactured; or (b) in a quantity, frequency or manner that is contrary to the instructions or recommendations of the prescribing physician or manufacturer.

“Controlled substance” or “~~D~~drugs” denotes any substance which could potentially impair the employee’s ability to effectively and safely perform the functions of ~~their~~his/her duties, including, but not limited to ~~the following including derivatives of:~~ alcohol, ~~coca~~ leaves, ~~[?]~~ cocaine, marijuana, opioids (opium and opiates or any hallucinogenic), “Speed” including amphetamines, methamphetamine, lysergic acid (L.S.D.), PCP, quaaludes, certain prescription drugs and medications, etc. ~~As outlined below, certain prescription drugs and medications shall also be classified as controlled substances.~~

~~A complete listing of controlled substances may be found in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined at 21 CFR 1300.11 through 1300.15. A copy of Schedules I through V of Section 202 of the Controlled Substances Act shall be kept on file with the District and will be available for inspection by an employee on request.~~

~~“Conviction” is a finding of guilt (including a plea of no contest), an imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.~~

### 3. Employee Responsibilities

An employee must:

1. not report to work or be subject to duty while ~~their/his/her~~ ability to perform job duties safely and effectively is impaired for any reason, including due to on- or off-duty alcohol or drug use; not possess or use alcohol or impairing drugs, ~~including illegal drugs and prescription drugs without a prescription~~, during working hours or while on standby duty, ~~on breaks, during meal periods~~ or at any time while on District property;
2. not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either or both employees are on duty or on standby duty, ~~unless attending a District sponsored event where alcohol may be served~~ [NOTE: Assuming it is unlikely the District would hold an event serving alcohol during working time, I recommend deleting the above language.];
3. submit immediately to an alcohol and drug test when requested by a District representative supervisor or manager, and approved by the General Manager or ~~his/her~~ designated representative; and
- ~~4.~~ notify ~~their/his/her~~ Supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which the employee knows or should know may interfere with the safe and effective performance of duties or operation of District equipment, ~~;~~ and
- ~~5.4.~~ provide, within 24 hours of request, bona fide verification of a current valid prescription for any potentially impairing drug or medication identified when a drug screen/test is positive. The prescription must be in the employee's name.

### 4. Management Responsibilities and Guidelines

Managers and Supervisors (for this section, collectively referred to as “Supervisor”) are responsible for reasonable enforcement of this policy.

~~Managers and~~ Supervisors may request that an employee submit to a drug and/or alcohol test when a ~~manager or~~ Supervisor has a reasonable suspicion that an employee is intoxicated or otherwise under the influence of drugs or alcohol while on the job or subject to being called.

"Reasonable suspicion" is a belief based on objective facts sufficient to lead a reasonably prudent and trained Supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired ~~or so that the employee's ability to perform his/her job safety is reduced~~. "Reasonable suspicion" ~~shall generally not be deemed to exist if other objective explanations exist~~.

For example, any of the following, alone or in combination, may support a determination of constitute reasonable suspicion ~~(when such behavior is unusual for an individual):~~

- Slurred speech;
- Alcoholic odor on breath;
- Unsteady walking and movement;
- ~~An accident involving District property, where it appears the employee's conduct is at fault, when other objective evidence exists;~~
- Physical or verbal altercation;
- Violent, threatening, or erratic~~Unusual~~ behavior;
- ~~Verbal altercation;~~
- Possession of alcohol or drugs;

Any ~~Manager or~~ Supervisor requesting an employee to submit to a reasonable suspicion drug and/or alcohol test should document in writing [to whom? when? (before sending for the test or afterwards?)] the facts constituting reasonable suspicion that the employee in question is ~~intoxicated or~~ under the influence of drugs or alcohol. Any reasonable suspicion determination should be made in consultation with HR.

~~Any Manager or Supervisor encountering~~If an employee ~~who~~ refuses an order to submit to a reasonable suspicion drug and/or alcohol test, the Supervisor~~analysis upon request~~ shall remind the employee of the requirements and disciplinary consequences of this policy. Where there is reasonable suspicion that the employee is then under the influence of alcohol or drugs, the ~~manager or~~ Supervisor should arrange for the employee to be safely transported to the testing facility~~home~~.

~~Managers and Supervisors shall not physically search the employee, nor shall they search the personal possession of an employee without the freely given written consent of, and in the presence of, the employee.~~[NOTE: This conflicts with the prior language about searches, and in any event, belongs in a stand-alone search policy.]

~~Managers and Supervisors shall notify their Department Manager or designee when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the District. If the Department Manager or designee concurs that there is reasonable suspicion of illegal drug possession, the Department Manager shall notify the appropriate law enforcement agency.~~[NOTE: Let's discuss. I would assume this is rarely, if ever, an issue. If it does arise, it should be handled on a case-by-case basis in consultation with the Department Manager and HR.]



## 5. Testing Physical Examination and Procedure

The drug and/or alcohol test may test for any substance which could impair an employee's ability to effectively and safely to perform the functions of their/his/her job, including, but not limited to, prescription medications, alcohol, heroin, cocaine, morphine and its derivatives, P.C.P., methadone, barbiturates, amphetamines, marijuana, and other cannabinoids, but not for non-psychoactive cannabis metabolites.

~~If drug/alcohol testing is proposed, the employee who is to be tested shall have the right to determine whether the test is by blood sample or by urinalysis. [NOTE: Given the new California law, urine testing is basically useless. In any event, the testing facility, and not the employee, should determine the manner of testing in compliance with the law.] Testing requested by the District, other than by breathalyzer performed by law enforcement for reasonable cause, shall only be conducted by a laboratory certified by the National Institute on Drug Abuse (NIDA). Analysis is performed, using gas spectrometer testing and shall, in all cases, include a split-sample properly identified, for use by the employee if the employee challenges a positive result. The split sample and/or original sample shall be available for parallel testing by a different licensed laboratory at the District's expense. Test results and samples shall be retained for at least one (1) year. Any irregularity in the chain of custody of a sample shall serve to void the test.~~

## 6. Results of Drug and/or Alcohol Test Analysis

A positive result from a drug and/or alcohol ~~analysis-test~~ may result in disciplinary action, up to and including termination. ~~"Positive results" shall be defined, for alcohol, as having a blood alcohol level above that limit as established under California law for the operation of a motor vehicle.~~

~~If the drug screen is positive, the employee must provide within 24 hours of request bona fide verification of a valid current prescription for the drug identified in the drug screen. The prescription must be in the employee's name. [NOTE: Any such information would be provided to the Medical Review Officer, and not the employer.] If the employee does not provide acceptable verification of a valid prescription, or if the prescription is not in the employee's name, or if the employee has not previously notified his or her Supervisor, the employee will be subject to disciplinary action up to and including termination.~~

~~If an alcohol or drug test is positive for alcohol or drugs, the District shall conduct an investigation to gather all facts. [NOTE: No – the MRO does this investigation.]~~

~~[NOTE: What is this "Report"? Let's discuss.] The Alcohol/Drug Abuse Report shall not be considered valid until signed by a trained Supervisor/Manager and the General Manager or his designee. Any such report shall be removed from the file unless confirmation is made that the violation took place.~~

## 7. Confidentiality

~~Suspicion of, participation in EAP laboratory reports and test results shall not appear in an employee's general personnel folder. Confidential medical information related to this policy, including reports and test results, of this nature will be is maintained-contained in a separate confidential medical fileolder that will be securely kept under the control of the Administrative Services Department. Any such information is The reports or test results may be disclosed only to District management on a-strictly need-to-know basis, or otherwise in accordance with law and to the tested employee upon request. [NOTE: Employees are not entitled to review the confidential medical file.]~~

~~Disclosures, without employee consent, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the employer and employee; (3) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.~~

~~Disclosure of any information garnered through the administration of this policy is a violation of this policy and may cause discipline up to and including termination of the person or persons making the disclosure.~~

## J. Drug and Alcohol Policy

It is the intention of this policy to help eliminate substance abuse and its effects in the workplace. The presence of drugs and alcohol on the job, and the influence of these substances on employees during working hours, are inconsistent with this objective. Involvement with drugs and alcohol, whether on or off the job, can take its toll on job performance and employee safety. Employees must be able to perform their duties safely and efficiently, in the interests of their fellow workers and the public as well as themselves.

The use of prescription drugs and/or over-the-counter drugs also may affect an employee's ability safely and effectively to perform their job. If an employee is taking a drug or medication, whether or not prescribed by a physician, which may adversely affect their ability to perform work in a safe or productive manner, they are required to report such use to their Supervisor. The employee's Supervisor, in conjunction with the Administrative Services Department, will then engage in the interactive process with the employee to determine whether any work accommodations may be appropriate.

Employees who think they may have an alcohol or drug usage problem are urged to seek confidential assistance from the Employee Assistance Program. [NOTE: Can we include here the contact information for the EAP?]

Certain supervisors and managers are trained [NOTE: I advise that all supervisors receive this training.] to recognize symptoms of impairment.

Alcohol or drug abuse is not tolerated, and disciplinary action, up to and including termination, will be imposed as necessary and appropriate to achieve a safe and productive workplace.

This policy provides guidelines for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of the District managers and employees in this regard. The District's goal is to eliminate substance abuse, or any other conduct or factor, which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or damage to the District's reputation. [NOTE: Employment policies should cover only employees. If we have others (e.g., consultants, volunteers, etc.) that we wish to inform about the District's drug and alcohol-free workplace, that should be in a separate document provided to those individuals.] Employees should be aware that violations of the policy may result in discipline, up to and including termination.

- 1. [NOTE: As this entire section beginning with "J" is the "policy," consider renaming this section to, e.g., "prohibition of drugs and alcohol."]**

It is District policy that employees shall not be under the influence of, or use, or possess, alcohol or drugs while on District property, at work locations, or while on duty or subject to being called to duty or standby, and that employees shall not sell or provide drugs or alcohol to

any other employee or person while on duty or on standby duty. [NOTE: Consider including specific exceptions for, e.g., one employee giving a co-worker an aspirin, or District-sponsored events at which alcohol may be served. Let's discuss whether it would be useful to add this language.]

While use of validly prescribed medications and drugs in conformance with prescribed directions may not necessarily violate this policy, employees must notify their Supervisor, before beginning work, when they are taking medications or drugs which could possibly interfere with the safe and effective performance of duties, or the operation of District equipment. In the event there is a question regarding an employee's ability safely and effectively to perform assigned duties while using such medications or drugs, medical clearance may be required.

[NOTE: The concept of workplace searches is broader than just the alcohol/drug context, and so should be in a separate, stand-alone policy.] The District reserves the right to search its premises and property, including its parking lots, and to search any personal property brought onto District premises. [NOTE: Where does the quoted language come from? If this is an MOU provision, the District would, of course, be bound by it. Otherwise, I am not aware of any legal obligation for an employer to provide advance notice, and right to representation, in connection with a search of its premises.]

Employees are expected to submit to an alcohol and/or drug test when requested by District management.

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be safely transported from the work site.

[NOTE: I expect the Manual is already includes a broader statement about the District's commitment to providing reasonable accommodation generally.]

The District has [contracted with? or makes available to employees?] an Employee Assistance Program (EAP) to assist those employees who seek help with alcohol or drug problems. Employees should contact their Supervisors or the Administrative Services Department for additional information.

## **2. Application [NOTE: Consider renaming this section to "definitions."]**

[NOTE: See Related Note above re: who is covered by this policy.]

For purposes of this Policy, the following definitions shall apply:

“Abuse of any legal drug” means the use of any legal drug, including prescription drugs, (a) in a manner other than the purpose for which it was prescribed or manufactured; or (b) in a quantity, frequency or manner that is contrary to the instructions or recommendations of the prescribing physician or manufacturer.

“Controlled substance” or “drugs” denotes any substance which could potentially impair the employee's ability to effectively and safely perform the functions of their duties, including,

but not limited to alcohol, [?] cocaine, marijuana, opioids (opium and opiates or any hallucinogenic), “Speed” including amphetamines, methamphetamine, lysergic acid (L.S.D.), PCP, quaaludes, certain prescription drugs and medications, etc.

### **3. Employee Responsibilities**

An employee must:

1. not report to work or be subject to duty while their ability to perform job duties safely and effectively is impaired for any reason, including due to on- or off-duty alcohol or drug use; not possess or use alcohol or impairing drugs during working hours or while on standby duty, or at any time while on District property;
2. not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either or both employees are on duty or on standby duty [NOTE: Assuming it is unlikely the District would hold an event serving alcohol during working time, I recommend deleting the above language.];
3. submit immediately to an alcohol and drug test when requested by a District supervisor or manager, and approved by the General Manager or designated representative; and
4. notify their Supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which the employee knows or should know may interfere with the safe and effective performance of duties or operation of District equipment.

### **4. Management Responsibilities and Guidelines**

Managers and Supervisors (for this section, collectively referred to as “Supervisor”) are responsible for reasonable enforcement of this policy.

Supervisors may request that an employee submit to a drug and/or alcohol test when a Supervisor has a reasonable suspicion that an employee is intoxicated or otherwise under the influence of drugs or alcohol while on the job or subject to being called.

"Reasonable suspicion" is a belief based on objective facts sufficient to lead a reasonably prudent and trained Supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired.

For example, any of the following, alone or in combination, may support a determination of reasonable suspicion:

- Slurred speech;

- Alcoholic odor on breath;
- Unsteady walking and movement;
- Physical or verbal altercation;
- Violent, threatening, or erratic behavior;
- Possession of alcohol or drugs;

Any Supervisor requesting an employee to submit to a reasonable suspicion drug and/or alcohol test should document in writing [to whom? when? (before sending for the test or afterwards?)] the facts constituting reasonable suspicion that the employee in question is under the influence of drugs or alcohol. Any reasonable suspicion determination should be made in consultation with HR.

If an employee refuses an order to submit to a reasonable suspicion drug and/or alcohol test, the Supervisor shall remind the employee of the requirements and disciplinary consequences of this policy. Where there is reasonable suspicion that the employee is then under the influence of alcohol or drugs, the Supervisor should arrange for the employee to be safely transported to the testing facility.

[NOTE: This conflicts with the prior language about searches, and in any event, belongs in a stand-alone search policy.]

[NOTE: Let's discuss. I would assume this is rarely, if ever, an issue. If it does arise, it should be handled on a case-by-case basis in consultation with the Department Manager and HR.]

## 5. Testing Procedure

The drug and/or alcohol test may test for any substance which could impair an employee's ability effectively and safely to perform the functions of their job, including, but not limited to, prescription medications, alcohol, heroin, cocaine, morphine and its derivatives, P.C.P., methadone, barbiturates, amphetamines, marijuana, and other cannabinoids, but not for non-psychoactive cannabis metabolites.

[NOTE: Given the new California law, urine testing is basically useless. In any event, the testing facility, and not the employee, should determine the manner of testing in compliance with the law.] Testing requested by the District shall only be conducted by a laboratory certified by the National Institute on Drug Abuse (NIDA). Analysis is performed using gas spectrometer testing and shall, in all cases, include a split-sample properly identified, for use by the employee if the employee challenges a positive result.

## 6. Results of Drug and/or Alcohol Test

A positive result from a drug and/or alcohol test may result in disciplinary action, up to and including termination. [NOTE: Any such information would be provided to the Medical Review Officer, and not the employer.]

[NOTE: No – the MRO does this investigation.]

[NOTE: What is this “Report”? Let’s discuss.]

## 7. Confidentiality

Confidential medical information related to this policy, including reports and test results, is maintained in a separate confidential medical file that will be securely kept under the control of the Administrative Services Department. Any such information is disclosed only to District management on a need-to-know basis, or otherwise in accordance with law. [NOTE: Employees are not entitled to review the confidential medical file.]

**PLEASANT VALLEY RECREATION AND PARK DISTRICT  
STAFF REPORT / AGENDA REPORT**

**TO: PERSONNEL COMMITTEE**

**FROM: MARY OTTEN, GENERAL MANAGER**  
**By: Kathryn Drewry, Human Resources Specialist**

**DATE: SEPTEMBER 27, 2023**

**SUBJECT: REVIEW UPDATED BEREAVEMENT AND CALIFORNIA FAMILY RIGHTS ACT (CFRA) SECTIONS OF THE PERSONNEL POLICY AND PROCEDURES MANUAL TO COMPLY WITH 2023 LABOR LAWS**

**BACKGROUND**

On January 1, 2023, two new California laws, AB 1041 and AB 1949 went into effect, both of which extend employee rights (and, in turn, employer obligations) with respect to employee-protected time off under the California Family Rights Act (“CFRA”). The Personnel Policy and Procedures Manual needs to be updated with these changes to reflect 2023 Labor Laws.

The California Family Rights Act (“CFRA”) was first passed in 1993 and is the state law that allows employees to take up to twelve workweeks of unpaid leave for certain family and medical reasons if an employer has at least five employees and other eligibility conditions are met. For example, the employee must have more than 12 months of service with the employer and have worked at least 1,250 hours in the 12-month period before the date they want to begin their leave. Examples of eligible care are a serious health condition of the employee or of a family member with a serious health condition, or to bond with a new child.

**ANALYSIS**

The first new law, California AB 1041, expands upon 2021 amendments to the CFRA that broadened the definition of “parent” to include parents-in-law for purposes of leaves of absence to care for family members and other related employee policies. California AB 1041 further expands coverage to a “designated person” who is any individual related by blood or whose association with the employee is the equivalent of a family relationship. Similar to the Family and Medical Leave Act’s inclusion of those who served or will serve in the role of a parent, even without a blood or marital parental relationship, the CFRA now provides the same rights of leave to care for a broader group of designated persons who have a relationship which is equivalent to a family relationship. Notably, a designated person does not have to be identified by an employee in advance to qualify, and they may be identified for the first time when the employee requests leave. However, under the new law, an employer can limit an employee to only one designated person per 12-month period. Employers should evaluate leave qualification separately for each potentially applicable leave, when determining whether leaves under various laws can run concurrently.



The second new law, also effective January 1, 2023, is California AB 1949. This law amends CFRA regulations regarding protected time off for bereavement leave. Covered employees who have worked at least 30 days are now provided five days of bereavement leave, to be taken within three (3) months of a qualifying death. This is a departure from the CFRA's prior rule, which granted permanent employees up to three (3) days of bereavement leave, with up to two (2) additional days of bereavement leave upon request only if the death was out of state. This amendment also clarifies that, where an employer has a paid bereavement leave policy, the first three (3) days of leave will be paid leave. However, if an employer does not have an existing paid bereavement leave policy, the leave may be unpaid (or paid, at the employer's discretion). Finally, the law makes it unlawful for employers to deny a request by an eligible employee to take up to five (5) days of bereavement leave upon the death of qualifying family members, as defined in the CFRA.

Members of the PVRPD Negotiations team met with SEIU Local 721 (Union) representatives in a meet-and-conference session to discuss changes to the laws. Union representatives countered the bereavement policy with changes to the term "Family" to include Step-Parents, and allow employees to utilize any leave banks if they take more than the three days of bereavement pay.

These two changes expand the landscape of protected leave in California, making it incumbent on employers to recognize these changes when granting and denying requests for leave, and to update their leave policies and practices to ensure compliance with these new amendments.

#### **FISCAL IMPACT**

There is no fiscal impact at this time.

#### **RECOMMENDATION**

It is recommended the Board review and approve the updated Bereavement and CFRA sections of the current Personnel Policy and Procedures Manual and the SEIU Local 721 MOU to comply with 2023 labor laws.

#### **ATTACHMENTS**

- 1) Redline Personnel Policy Manual Update for Bereavement Section L.
- 2) Redline MOU Bereavement Article 25
- 3) Redline Personnel Policy Manual Section E. Leave of Absence

## Pleasant Valley Recreation and Park District

### Personnel Policy Manual

#### L. Bereavement Leave

In the event of a verified death in an employee's family, upon request, the District shall grant ~~a full-time employee up to three (3) days and a part-time year-round employee up to eighteen (18) hours of~~ up to five (5) workdays of bereavement leave, as provided below.

For the purpose of this Article, the term "family" shall be defined as spouse, child, parent, sibling, grandparent, grandchild, parent of a spouse, registered domestic partner, and parent of a registered domestic partner.

1. For full-time employees, bBereavement leave will be paid at full pay for up to three (3) ~~consecutive workdays for full-time employees or eighteen (18) consecutive hours for part-time year-round employees~~ and shall not be charged against the employee's accrued vacation or sick leave. If the employee requests to take a cumulative leave of up to five (5) workdays, the District will allow the employee to use their accrued sick leave for the remaining two (2) workdays.
2. For part-time year-round employees, bereavement leave will be paid at full pay for up to eighteen (18) hours and shall not be charged against the employee's accrued vacation or sick leave. If the employee requests to take a cumulative leave of up to five (5) workdays, tWhen travel to a distant greater than 400 miles or other circumstances require an absence longer than three (3) consecutive workdays for full-time employees or eighteen (18) consecutive hours for part-time year-round employees, the District may will allow the employee to use up to two (2) days of their accrued sick leave for the remaining balance of the cumulative 5 workdays.
3. For all other employees, up to a cumulative total of 5 workdays of unpaid bereavement leave provided,
4. If the employee requests to take a cumulative leave of longer than five (5) consecutive workdays, the District may allow the use of accrued vacation or compensatory time.
- 3.5. The bereavement leave must be completed within three (3) months of the date of death of the employee's family member.

An employee desiring to attend a funeral of others than described above may be given the time off, provided he/she so notified his/her Supervisor two (2) days in advance. Upon concurrence and authorization of the Supervisor, he/she shall take the time off against vacation, management or compensatory annual leave.

The District may require, within 30 days of the first day of the leave, that the employee provide documentation of the death of the family member, such as a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.

# Memorandum of Understanding between Pleasant Valley Recreation and Park District and Service Employees International Union Local 721

## Article 25 Bereavement Leave

In the event of a verified death in an employee's family, upon request, the District shall grant ~~a full-time employee up to three (3) days and a part-time year-round employee up to eighteen (18) hours of~~ up to five (5) workdays of bereavement leave, as provided below.

For the purpose of this Article, the term "family" shall be defined as spouse, child, parent, sibling, grandparent, grandchild, parent of a spouse, registered domestic partner, step-parent, and parent of a registered domestic partner.

1. For full-time employees, bBereavement leave will be paid at full pay for up to three (3) ~~consecutive workdays for full-time employees or eighteen (18) consecutive hours for part-time year-round employees~~ and shall not be charged against the employee's accrued vacation or sick leave. If the employee requests to take a cumulative leave of up to five (5) workdays, the District will allow the employee to use their any accrued sick-leave for the remaining two (2) workdays.
2. For part-time year-round employees, bereavement leave will be paid at full pay for up to eighteen (18) hours and shall not be charged against the employee's accrued vacation or sick leave. If the employee requests to take a cumulative leave of up to five (5) workdays, tWhen travel to a distant greater than 400 miles or other circumstances require an absence longer than three (3) consecutive workdays for full-time employees or eighteen (18) consecutive hours for part-time year-round employees, the District ~~may~~ will allow the employee to use up to two (2) days of their any accrued ~~sick-leave~~ for the remaining balance of the cumulative 5 workdays.
3. For all other employees, up to a cumulative total of 5 workdays of unpaid bereavement leave provided,
4. If the employee requests to take a cumulative leave of longer than five (5) consecutive workdays, the District may allow the use of any accrued vacation or compensatory time or leave without pay.
- 3-5. The bereavement leave must be completed within three (3) months of the date of death of the employee's family member.

An employee desiring to attend a funeral of others than described above may be given the time off, provided he/she so notified his/her Supervisor two (2) days in advance. Upon concurrence and authorization of the Supervisor, he/she shall take the time off against vacation, management or compensatory annual leave.

The District may require, within 30 days of the first day of the leave, that the employee provide documentation of the death of the family member, such as a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.

## E. Family Care and Medical Leave

The District will provide family and medical care leave for eligible employees, as required by State and Federal law, including leaves under the federal Family and Medical Leave Act (FMLA) (which includes Military Caregiver Leave, also known as Covered Service Member Leave), the California Family Rights Act (CFRA), and the Paid Family Care Leave Act (PFCLA). An individual who is entitled to leave under the FMLA and the CFRA may take Family Temporary Disability Insurance (FTDI) leave concurrently with leave taken under the FMLA and the CFRA.

### 1. Definitions

“12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.

“Child” means, under FMLA, a child under 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. Under CFRA, there is no age limitation or requirement. An employee’s child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, or foster child, a stepchild, a legal ward, a son or daughter of a domestic partner, or a son or daughter to whom the employee stands in loco parentis (in place of a parent).

“Parent” means the biological, foster, or adoptive parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. Under CFRA, this term also includes parents-in-law.

“Spouse” means a husband or wife as defined or recognized under California state law for purposes of marriage.

“Domestic Partner” means a partner as defined in Section 297 of the Family Code.

“Designated Person” means any individual related by blood or whose association with the employee is the equivalent of a family relationship.

~~“Family Member” means a Child, Parent, Spouse, or Domestic Partner as defined in this family care and medical leave policy.~~

“Serious Health Condition” means an illness, injury impairment, or physical or mental condition that involves:

1. Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (*i.e.*, inability to work or perform other regular daily activities because of the serious health condition, treatment involved, or recovery therefrom); or
2. Continuing treatment by a health care provider (*i.e.*, a serious health condition involving continuing treatment by a Health Care Provider as defined under Federal or State law).