

ORDINANCE NO. O-2018-__

BE IT ENACTED BY THE QUORUM COURT OF THE COUNTY OF BENTON, STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE AMENDING CERTAIN SECTIONS OF BENTON COUNTY ORDINANCE NO. O-2017-52 REGARDING BENTON COUNTY EMPLOYMENT AND SALARY ADMINISTRATION POLICY

NOW, THEREFORE, BE IT ENACTED BY THE QUORUM COURT OF THE COUNTY OF BENTON, STATE OF ARKANSAS:

ARTICLE 1. That “Article 13 – Drug Free Workplace” of Benton County Ordinance No. O-2017-52 is hereby amended to read as follows:

Article 13. Drug-Free and Alcohol-Free Workplace Policy.

Section 13.01 The County is committed to protecting the safety, health, and wellbeing of all employees and the public in our workplace. The County has established a drug-free workplace program that balances our respect for individuals with the need to maintain an alcohol-free and drug-free environment. The purpose of this policy is to assure worker fitness for duty and to protect the County’s employees, passengers, and the public from the risk posed by misuse of alcohol and use of prohibited drugs. This policy is intended to comply with all applicable federal regulations governing workplace anti-drug and anti-alcohol programs.

Section 13.02 Testing

To ensure the accuracy and fairness of drug and alcohol testing, all testing will be conducted by a Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory, according to SAMHSA guidelines, in accordance with procedures required by the U.S. Department of Transportation where applicable, and in compliance with all applicable laws and regulations. Prohibited controlled substances are those defined by the Federal Controlled Substances Act and applicable Arkansas statutes governing controlled substances. An employee whose initial drug test result is positive and who requests a test of the split sample will be suspended without pay until the County receives the result of the split test. The split test will be paid by the County to be reimbursed to the County by the employee via withholding from the employee’s paycheck. A negative result from the split test will render the first test invalid and the employee will be reinstated with back pay and reimbursement for the cost of the split test.

Section 13.03 Prescription Drugs, Over-the-Counter Drugs, and Medical Marijuana

Prescription drugs and over-the counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription—however, a safety-sensitive employee who has been prescribed a medication that might cause drowsiness or otherwise impair the employee's ability to safely perform job functions shall notify the employee's supervisor and provide a written statement from the prescribing practitioner certifying that such use will not impair the employee's ability to safely perform his or her essential job functions. When proper notification is made and a licensed medical practitioner's statement is provided, a reasonable effort will be made to temporarily assign the employee to another position, if available. The illegal or unauthorized use of prescription drugs is prohibited. Medical marijuana usage under the Arkansas Medical Marijuana Amendment is subject to Act 593 of 2017, which restricts an employee in a safety-sensitive position from performing those duties if a positive test result occurs even if the employee is a qualifying patient under the Amendment and/or holds a registry identification card.

Section 13.04 Post-Offer / Pre-Employment Testing.

Post-offer / pre-employment testing is required for all prospective County employees. The prospective employee will not be employed until the test results are received by the Human Resources Department. The Human Resources staff will then notify the elected County official or department head of the testing results. A prospective employee cannot start work until the post-offer / preemployment test result is received.

Section 13.05 Safety-Sensitive Positions

Safety-Sensitive Position include, but are not limited to, positions involving a safety-sensitive function pursuant to regulations governing drug and alcohol testing adopted by the U.S. Department of Transportation and the Arkansas General Assembly. Safety-sensitive positions typically involve job duties where impairment may present a clear and present risk to co-workers or other persons. A safety-sensitive position includes any position where a momentary lapse in attention could result in injury or death to another person. A safety-sensitive position includes, but is not limited to, a position in which a drug or alcohol impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to:

- (a) carry a firearm
- (b) perform life-threatening procedure

- (c) work with confidential information or criminal investigations
- (d) work with controlled substances
- (e) maintain a commercial driver's license
- (f) drive a vehicle or operate heavy equipment as part of normal duties
- (g) serve as a mechanic on County vehicles
- (h) serve as a dispatcher for law enforcement or emergency services
- (i) be prepared to use justified physical force against persons to maintain order or security for persons detained by the county.

Section 13.06 Testing of Safety-Sensitive Employees.

Safety-sensitive employees are subject to testing to detect the presence of alcohol and controlled substances, including:

- (a) post-offer / pre-employment testing
- (b) random testing
- (c) reasonable-suspicion testing
- (d) postaccident testing
- (e) return-to-duty testing and follow-up testing.

Section 13.07 Random Testing of Safety-Sensitive Employees.

Employees in safety-sensitive positions will be subject to random, unannounced testing. A computerized program shall determine the individual safety-sensitive employees to be randomly tested.

Section 13.08 Reasonable-Suspicion Testing of Safety-Sensitive Employees.

A safety-sensitive employee who is reasonably suspected of being intoxicated, impaired, under the influence of alcohol or drugs, or not fit for duty, shall be suspended from job duties with pay pending an investigation and verification of condition. Only an elected County official or supervisor who has been trained in reasonable-suspicion testing requirements may initiate reasonable-suspicion testing.

Section 13.09 Post-Accident Testing.

A County employee shall be suspended with pay pending an investigation and verification of condition, and screened for the presence of controlled substances and alcohol, as soon as practicable, following his or her involvement in an accident involving a County vehicle or equipment, under the following situations:

- a) an accident that results in the loss of human life
- (b) an accident that results in a moving violation
- (c) an accident that involves bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident
- (d) an accident that involves one or more vehicles incurring disabling damage as a result of the accident (requiring any vehicle to be transported away from the scene).

Section 13.10 Disciplinary Action.

The following shall result in immediate discharge:

- (a) refusal to take a mandated test for drugs or alcohol
- (b) a positive drug test (once the time limit for requesting a split test has expired, or upon receipt of a positive result from the split test);
- (c) positive alcohol test.

Section 13.11 All records regarding the County's Drug-Free and Alcohol-Free Workplace Policy shall be confidentially maintained, in a secure location with controlled access. Although records maintained by the County will remain confidential, such records may be used in legal proceedings in defense of the County, its agents, and employees, and such records may be otherwise disclosed as required or allowed by law.

ARTICLE 2. That the previous language of Article 13 – Drug Free Workplace, as established in Benton County Ordinance No. O-2017-52 is repealed in its entirety.

ARTICLE 3. That “Article 14 – Compensatory Time” of Benton County Ordinance No. O-2017-52 is hereby amended to add Section 14.15 as follows:

Section 14.15 Overtime pay with regards to Grant/Federal Program reimbursements (i.e. STEP grants, Corp of Engineer grants, US Marshall Service) will be paid regardless of how many regular hours are worked during the current pay week and regardless if benefits hours (sick, vacation) are used during the current pay week.

ARTICLE 4. That portions of “Article 21 – Salary Administration Program” are hereby amended as follows:

Section 21.07 Hire-in Rate

A new hire may be assigned a wage rate at any level from the minimum of the grade range up to ~~90% of the midpoint~~ maximum for the position’s salary range, provided the new-hire has additional experience, education, etc. that added value to the position. Any increase over the midpoint of the salary range should be reviewed by Human Resources and approved by the Elected Official. No employee shall be hired above the salary grade maximum.

Section 21.08 Salary Increase after Six-Month Anniversary Date

A salary increase may be given within an employee’s second six months on the job, at the discretion of the elected official, ~~and only if the employee was hired below the 90% of midpoint for the position’s salary range.~~ If funds are available in the current budget, the elected official may grant a new employee a salary increase in an amount not to exceed 3%. This increase may not result in a wage that exceeds ~~90% of the salary grade~~ maximum midpoint.

Section 21.14 Limit of Promotion Increases

The amount of a promotional increase may be assigned a new salary ~~anywhere from the minimum up to ninety (90%) of the midpoint of the new grade range. Employees whose salaries already exceed 90% of the midpoint of the new grade’s salary range may receive an increase~~ in line with other employees in the same grade and similar experience. Any promotional increase that exceeds the above criteria requires approval of the Quorum Court. The individual’s qualifications and performance shall determine the new salary. Promotional increases shall be in addition to, rather than instead of merit increases.

Section 21.15 Salary Assignments for Lateral and Downward Transfers

When an employee moves to a position with an equal or lesser grade, they are accepting a job that may have less responsibilities and accountabilities. It is their choice to take this position and is not associated with a punitive action, as in the case of demotions. When an employee takes a position at an equal or a lower salary grade they may be assigned a salary between the minimum and ~~90% of the midpoint~~ maximum of the salary grade. In the event their salary is above the ~~midpoint~~ maximum of salary grade for their new position, the employee's wages will be reduced to the maximum or to a level equivalent to others within the department with the same grade and similar length of service and experience.

Section 21.16 Salary Assignments for Demotions

A demotion occurs as a result of poor performance and is punitive in nature. When an employee is not performing to expectations, the elected official may decide to demote the employee to a position with a lower salary grade. The new salary for the employee shall be between the minimum and ~~90% maximum~~ of the salary grade-~~midpoint~~. Pay reductions should be discussed with HR to determine appropriate pay based on equivalent positions, experience, etc.

Section 21.22 ~~Salary increases given during the year~~

~~If an employee exhibits exceptional performance and the elected official has available funds in the salary line of the current budget, a performance increase may be given during the year. This increase may not exceed 5%. An elected official must submit an updated performance evaluation documenting the justification for the salary increase.~~

Section 21.27 Descriptions for New Positions

The elected official/department head should prepare a job description questionnaire for a new position. The ~~personnel administrator,~~ Human Resources Director in conjunction with the JESAP Committee, will prepare the job description for the approval of the elected official and schedule it on the agenda for the JESAP Committee for evaluation and rating.

ARTICLE 5. That the attached such document called the "Benton County Employment Policy" is attached hereto and ~~shall be codified,~~ shall be published and printed as a handbook for all county employees.

ARTICLE 6. That all ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

APPROVED:

BARRY MOEHRING, COUNTY JUDGE
DATE SIGNED:_____

ATTEST:

TENA O'BRIEN, COUNTY CLERK
SPONSOR: JP Shirley Sandlin_____
DATE ADOPTED:_____
Votes For:____Votes Against:_____
Abstain:____Present:____Absent:____