

## ARTICLE 9

# Separation, Disciplinary Action, and Reinstatement

### **Section 901 Types of Separation**

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Separation from County service occurs when the employee leaves the payroll for reasons listed in this section. The employee's separation (termination) date shall be the actual last day worked. It shall not be on a County holiday, unless the holiday is an actual work day for the employee.

### **Section 902 Resignation**

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All resigning employees should give a minimum of two (2) weeks written notice with the exception of supervisors and Department Heads who should give a minimum of thirty (30) days written notice. Written notice shall be given to the employee's immediate supervisor, who will forward the notice to the Department Head and the Human Resources Department. In the case of a Department Head's resignation, the written notice shall be given to the County Manager.

### **Section 903 Voluntary Resignation Without Notice**

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An employee who is (1) absent from work and does not contact the immediate supervisor for three (3) consecutive scheduled workdays or (2) is absent for at least three (3) consecutive scheduled workdays, has been instructed verbally or in writing of a specific manner of reporting by management and does not report to the appropriate supervisory personnel on a regular basis satisfactory to the appropriate supervisory personnel may be separated from employment as a voluntary resignation. Separation pursuant to this policy shall not occur until the supervisor/Department Head has undertaken reasonable efforts to locate the employee and determine when, or if, the employee is intending to return to work and the supervisor/Department Head has consulted with the County Manager.

## **Section 904 Separation Due to Administrative Termination**

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If an employee is out of work for medical reasons and has exhausted all available paid and unpaid leave, and if no reasonable accommodation is possible (including temporary or permanent reassignment to a different vacant position that is appropriate based on the employee's education, skills and experience), the employee will be administratively terminated. "Administrative termination" means that the employee was not at fault, and the employee will remain eligible to reapply for a position in the future. Currituck County will not contest any unemployment claim filed by an employee who is terminated under these circumstances. If the employee believes that reasonable accommodation was possible or believes that the termination was unfair in any way, the employee may use the County grievance procedure.

## **Section 905 Retirement**

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An employee may retire when retirement criteria are met and application is made for retirement benefits from the North Carolina Local Governmental Employees' Retirement System or Law Enforcement Officers' Retirement System.

## **Section 906 Reduction-In-Force**

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An employee may be reduced-in-force and separated from County service because of a shortage of funds or work, elimination of a position, reorganization or other changes in duties. Retention of employees in positions affected shall be based on systematic consideration of the quality of job performance as documented by current performance appraisals, organizational needs, type of employment and seniority. Employees who are separated from the County because of a reduction-in-force will be given at least two (2) weeks written notice of the anticipated separation. No regular employee shall be separated while there are temporary, probationary or trainee employees serving in the same job class in the same department unless the regular employee is not willing to transfer to the position held by employees in temporary, probationary or trainee positions or the regular employee does not have the knowledge, abilities, credentials or skills required to perform the work of the alternate position or cannot obtain the knowledge, abilities, credentials or skills within a reasonable period of orientation and training.

## **Section 907 Disability**

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An employee may be separated for disability when the employee cannot perform the required duties because of a physical or mental impairment for which reasonable accommodation is not possible. The employee or the County may initiate action for disability separation, but in all cases, disability separation shall be supported by medical evidence certified by a competent physician and reported immediately to the County Manager. The County may require a physical and/or mental examination at its expense performed by a physician of its choice. Before an employee is separated for disability, an effort shall be made to make reasonable accommodations that will allow the employee to continue working in the current position or to locate alternative positions within County service for which the employee may be suited. To discharge the employee, the disability shall be such that a reasonable accommodation cannot be made.

## **Section 908 Death**

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All compensation due an employee who dies while employed by the County will be paid to the estate of the deceased employee. The date of death shall be recorded as the separation date for computing compensation due. The County shall make every effort to notify the deceased's beneficiary or estate administrator concerning compensation to the estate. Department Heads shall immediately notify the Human Resources Department of an employee's death.

## **Section 909 Just Cause for Disciplinary Action**

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Department Heads and supervisors are responsible for maintaining the proper conduct and performance standards of employees under their supervision. When a supervisor or Department Head determines that an employee's performance or conduct is unacceptable, appropriate disciplinary action may be imposed in order to secure the employee's job performance or behavioral improvement. Currituck County uses progressive disciplinary measures except in cases where an employee demonstrates grossly inappropriate conduct or severely and grossly inefficient job performance warranting immediate dismissal. The severity of the disciplinary action will depend upon the circumstances that give rise to it.

All employees are at will and serve at the pleasure of the County, except those whose employment contract with Currituck County provides otherwise.

Temporary and probationary employees may be dismissed without notice or cause and without any hearing or right of appeal, **however these individuals do have appeal rights in matters of alleged discrimination, workplace harassment or retaliation as outlined in Article 10.**

Any employee may be warned, demoted, suspended or dismissed for just cause by the County Manager after consultation with the Department Head. The degree and type of action taken shall be based upon the sound and considered judgment of the County Manager in accordance with the provisions of this policy.

## **Section 910 Definitions Applicable to Disciplinary Action**

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- A. **Performance Improvement Plan** – A tool to help improve conduct or performance that is less than acceptable and provides special direction intended to help an employee achieve and sustain satisfactory conduct and/or performance.
- B. **Unacceptable Personal Conduct** – A basis for discipline or dismissal. An employee may be warned, suspended, demoted, or dismissed for reasons of personal conduct without prior warning or disciplinary action. There is no requirement to give a specific number of warnings or to give any prior warnings for unacceptable personal conduct. Disciplinary action up to and including dismissal for unacceptable personal conduct may be imposed without previous warnings to the employee. An employee may be suspended without notice by the County Manager for causes related to personal conduct in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. Unacceptable personal conduct includes disciplinary action up to and including dismissal for conduct which no reasonable person should expect to receive prior warning including, but not limited to:
- Failure to follow instructions, directions, or procedures (can also be considered job performance);
  - Job related conduct which constitutes a violation of State or Federal law;
  - Conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the County;
  - The willful violation of known or written work rules or policies;
  - Conduct unbecoming an employee that is detrimental to the County's service;
  - The abuse of client(s), patient(s), student(s) or a person(s) over whom the employee has charge or to whom the employee has a responsibility, or of an animal owned or in the custody of the County;
  - Falsification of an employment application or other employment documentation;

- Insubordination which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor;
- Absence from work after all authorized leave credits and benefits have been exhausted.

C. **Unsatisfactory Job Performance** – A basis for discipline or dismissal. Disciplinary actions for unsatisfactory job performance do not require prior warnings for the same type of performance problem. Written warnings are given with the intention of permanently improving job performance; however, if the improvement later deteriorates or if other unsatisfactory job performance occurs, the supervisor may proceed to the next level of discipline. No maximum number of warnings are required. Unsatisfactory job performance is defined as a deficiency in work performance including, but is not limited to,:

- violation of, or failure to follow work rules;
- inattention to or negligence of the duties of one's position;
- failure to meet production or accuracy standards;
- poor work habits;
- excessive tardiness and absenteeism;
- failure to follow instructions, directions, or procedures (this can also be considered personal conduct);
- poor work quality and quantity;
- timeliness in the performance of work-related analysis, decisions, or judgment.

D. **Grossly Inefficient Job Performance** – A basis for discipline and dismissal. Occurs in instances in which the employee fails to perform job requirements satisfactorily as specified in the job description, work plans, or as directed by the management of the work unit or the County and the employee's failure results in:

- the creation of the potential for death or serious harm to a client(s), an employee(s), members of the public or to a person(s) over whom the employee has responsibility;
- the loss of or damage to any County property or funds that result in a serious impact on the County and/or work unit;
- the substantial increase in potential liability or loss of credentials or revenue for the County, or;
- failure to obtain or maintain legally or job-required credentials and falsification of information on a County job application which shall be the basis for immediate dismissal.

There is no requirement to give a specific number of warnings or to give any prior warnings for grossly inefficient job performance. Disciplinary action up to and including dismissal for gross inefficiency may be imposed without previous warnings to the employee.

- E. **Written Warning** – A formal disciplinary action given to the employee by the supervisor in a private conference. The warning documents the way in which the employee's performance or conduct has failed to meet expectations. Written warnings are not grievable.
- F. **Final Written Warning** – A formal disciplinary action given to the employee by the supervisor in a private conference. Final written warnings are often the final step before dismissal. Final written warnings are grievable.
- G. **Disciplinary Suspension** - The temporary removal of an employee from duty without pay for disciplinary reasons. Unpaid disciplinary suspensions of less than a full week with exempt employees are not allowable under this section.
- H. **Investigatory Suspension** - The temporary removal of an employee from duty with pay while an investigation is pending.
- I. **Demotion** - The reassignment of an employee to a position in a lower pay band due to disciplinary reasons, poor performance, lack of necessary qualifications, or job elimination.
- J. **Dismissal** – The permanent removal of an employee from duty, thereby ending the employment with the County. This is the most severe disciplinary action imposed by management and requires approval by the Department Head and County Manager.

## **Section 911 Steps in Disciplinary Procedure**

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The following steps shall be followed in the disciplinary procedure. A supervisor's failure to comply with all procedural requirements of this section will not invalidate a disciplinary action unless the failure to comply harms the employee of due process. Further these bases for disciplinary action are not mutually exclusive, as certain actions by employees may fall into multiple categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

### **Step 1:**

- When addressing inappropriate conduct or gross inefficiency so severe that immediate dismissal is warranted proceed to **Step 13**.
- If the situation does not warrant immediate dismissal as outlined in **Section 910-B** and/or **Section 910-D** proceed to

### **Step 2:**

- Supervisor shall schedule a meeting when first observes or learns of unsatisfactory conduct and/or job performance deficiencies, or if an employee is rated overall marginal or unsatisfactory on their initial six month and/or annual performance appraisal.
- During scheduled meeting the supervisor will discuss the employee's unsatisfactory conduct and/or deficient job performance, County expectations and identify corrective action the employee needs to take.
- The supervisor documents this meeting in writing.

**Step 3:**

- If problems of unsatisfactory conduct and/or job performance continue, the supervisor will develop a Performance Improvement Plan which outlines a method to help improve conduct or performance that is less than acceptable and provides special direction intended to help an employee achieve and sustain satisfactory conduct and/or performance.
- The Performance Improvement Plan shall state the process and timetable that will be used to determine improvement of the employee's conduct and/or performance. The Performance Improvement Plan shall be signed by the employee, supervisor and/or Department Head, dated and filed with the Human Resources Department.
- If the employee refuses to sign the Performance Improvement Plan the Department Head shall note the refusal on the plan. A copy of the Performance Improvement Plan shall be given to the employee.
- If employee successfully fulfills the conditions of the Performance Improvement Plan, the supervisor will submit written documentation to the Department Head and the Human Resources Director.

**Step 4:**

- If the employee does not meet the requirements outlined in the Performance Improvement Plan in the time specified or if the conduct and/or performance deteriorates while the Performance Improvement Plan is in effect the supervisor will also provide written documentation to the Department Head and the Human Resources Director.
- The supervisor and/or Department Head may proceed to disciplinary action.

**Step 5:**

- Prior to taking formal disciplinary action, the supervisor shall conduct a fact-finding inquiry to gather pertinent details regarding the situation. The supervisor will then discuss the facts of the case with the Department Head. Department Heads are responsible for notifying the County Manager of any situation to which the policy applies. The County Manager may consult the Human Resources Director, the Department Head, the County Attorney, and/or any other County official deemed appropriate in order to determine a course of action;
- After consulting with Human Resources and/or the County Manager, the Department Head will pursue disciplinary actions deemed appropriate based on the information gathered during the fact-finding inquiry.

**Step 6:**

- Arrange for conference with employee;
- The Department Head shall provide the employee with written notice of the proposed disciplinary action, which will include the nature of the proposed action, its recommended effective date, the reason(s) for the action, and a date and time for a conference. At this conference, the employee may present to the Department Head any response to the proposed disciplinary action. During this meeting, the County will not meet with the employee's attorney unless the County Attorney, in his discretion, approves the meeting and can attend.

**Step 7:**

- The Department Head will consider the employee's response to the proposed disciplinary action, and will, within three (3) working days after the conference, notify the employee in writing of the final decision to take disciplinary action. The Department Head shall wait a minimum of twenty-four hours (24) hours before notifying the employee of this decision. The notice of final disciplinary action shall contain the following items:
  - A statement of the reason(s) for the action;
  - A statement noting this warning is a step in the disciplinary process;
  - The basis for the disciplinary action, whether unsatisfactory performance
  - and/or personal conduct;
  - Specifics regarding other recent job performance or personal conduct warnings;

- Specific actions to be taken within a designated time frame to remedy performance deficiencies;
- That the consequence for failing to make the necessary improvement within the specified time frame will lead to further disciplinary action, up to and including dismissal. Absent a specified time frame, 30-60 days is presumed to be the period of time allowed for completing required performance improvements or demonstrating compliance with a performance improvement plan. Immediate corrective action is required for grossly inefficient job performance or unacceptable personal conduct.
- A statement that written warnings, unless specified as final written warnings, are not grievable.
- The Department Head shall provide the County Manager and the Human Resources Department with a written notice of action taken.

**Step 8:**

- If the employee fails to meet the above mentioned requirements outlined in **Step 7** and the employee's conduct or performance does not improve, the Department Head may issue a final written warning;
- Follow all steps as outlined in **Steps 5-7**;
- The final written warning shall state the potential consequences of dismissal if there is no improvement. In addition, the final written warning shall state appeal rights in accordance with Article 10.

**Step 9: (Optional):** During the period after a final written warning has been given, management, in its discretion, may choose to counsel with the employee concerning the employment status before a decision to dismiss is made.

The counseling shall involve a discussion of the necessity for the employee's commitment to improve performance. As a part of the counseling, management may request the employee to take up to a day's leave with pay to consider whether or not the employee wishes to continue employment with the agency. This time away from the job site shall not be charged to the employee's vacation or sick leave; it shall be considered as a type of disciplinary leave with pay, set aside for the employee to review the work situation and make a decision for the future. It shall be stressed to the employee that a decision to continue employment with the County will require a commitment to improve performance, and that a lack of improvement will lead to dismissal.

**Step 10: Demotion:**

- Demotion for unsatisfactory job performance may be made only after the employee has received at least one (1) prior written warning regarding job performance.
- Discipline for unacceptable personal conduct or grossly inefficient job performance may be imposed at any time without prior warning to the employee.
- Conduct fact-finding as outlined in **Step 5**. Proceed to next step if evidence indicates need for demotion.
- As outlined in **Step 6**, Department Head shall provide the employee with written notice of the proposed disciplinary action, which will include the nature of the proposed action, its recommended effective date, the reason(s) for the action, and a date and time for a conference. At the conference, the employee may present to the Department Head any response to the proposed disciplinary action to the Department Head. During this meeting, the County will not meet with the employee's attorney unless the County Attorney, in his discretion, approves the meeting and can attend.
- If the decision is made to demote the employee, the Department Head shall give the employee written notice of the specific reasons for the demotion, the effective date of the demotion, how and to what extent the demotion will affect the employee's salary rate or pay grade, and a statement that this action is not grievable. A copy of the written notice will be made part of the employee's personnel record.

**Step 11 Investigatory Suspension (Optional):** Investigatory suspension is the temporary removal of an employee from duty for potential disciplinary reasons and is with pay. This process may be used to provide time to investigate, establish facts and reach a decision concerning an employee's status. The investigatory suspension may be used to provide time to schedule and hold a disciplinary conference. The County may elect to use an investigatory suspension in order to avoid undue disruption of work or to protect the safety of persons or property. An investigatory suspension without pay shall not exceed forty-five (45) calendar days. If no action has been taken by management by the end of forty-five (45) calendar days, one of the following shall occur: reinstatement of the employee with full back pay; appropriate disciplinary action based on the results of the investigation; or reinstatement of the employee with up to three (3) days' pay deducted from the back pay. The decision to deduct pay is to be based upon management's determination of the degree to which the employee was responsible for or contributed to the reasons for suspension. An employee may be suspended without notice by the County Manager for causes related to **PERSONAL CONDUCT** in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. A written

summary giving the circumstances and facts leading to the immediate suspension shall be prepared: one copy shall be delivered to the employee by certified mail, one copy shall be filed in the employee's personnel file, one copy shall be filed with the Department Head and one copy shall be filed with the County Manager.

Investigatory suspension of an employee shall not be used for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

### **Steps for Placing Employee on Investigatory Suspension:**

- Consult with County Manager regarding the specifics of the situation.
- Determine if employee is exempt status in accordance with Provisions of Fair Labor Standards Act (FLSA). FLSA requirements state an exempt status employee shall not be suspended without pay, except for safety reasons or major work rule violations, for less than one full workday.
- Ensure the employee has received at least one prior disciplinary action(s) in matters of **unsatisfactory job performance**.
- No prior disciplinary actions are required in matters of **grossly inefficient job performance** or unacceptable personal conduct. An employee may be suspended without pay for a current incident of grossly inefficient job performance or unacceptable personal conduct. An employee may be suspended immediately without advance notice or scheduled conference.
- Ensure the employee leaves County property at once and remains away until further notice when the County Manager suspends an employee without notice. Collect all County-issued equipment to include badges, keys and/or other materials. Contact IT Department so employee access to Currituck County computers is denied.
- Provide the employee written notice of the specific reasons for the investigatory suspension, the effective dates of the suspension and a statement that this action is not grievable. This written notice to the employee shall be sent by certified mail. A Personnel Action Form documenting the disciplinary action shall be completed and forwarded to the Human Resources Department. A copy of the written notice will be made part of the employee's personnel record.
- Ensure the investigatory suspension without pay does not exceed forty-five (45) calendar days. If no action has been taken by management by the end of the forty-five (45) calendar days action shall be taken as outlined above.

**Step 12 Administrative Leave or Administrative Reassignment (Management Option):** On a case-by-case basis, the County may place an employee on administrative leave with pay and/or reassign the employee to any available County position for an indefinite period of time, as determined by the County Manager to be in the best interests of the County while in the process of an investigation or other administrative proceeding conducted by an outside agency.

**Step 13 Dismissal:** Dismissal is the removal of an employee from duty, thereby ending the employment with the County. This is the most severe disciplinary action which may be imposed by management and requires approval by the Department Head and County Manager. Prior to deciding to dismiss a regular employee, the following steps shall be taken:

- The supervisor and/or Department Head recommending dismissal shall discuss the recommendation with the Human Resources Director and the County Manager before any action is taken.
- The supervisor shall attempt to hold a conference with a regular employee. Advance written notice of the conference shall be given to the employee of the time, location, and the issue for which dismissal has been recommended. The amount of advance notice shall be as much as is practical under the circumstances. The purpose of this conference is to receive and consider any new information the employee may present. If an employee fails to, or refuses to, attend the conference, the employee may be dismissed. The supervisor shall notify the employee of the conference in writing to include the reasons for the conference.
- The conference will be conducted by the supervisor limiting attendance to the employee, the employee's supervisor, the Human Resources Director, and the Department Head. If the person conducting the conference chooses, security may be present. No attorney shall represent either side at the conference.
- In the conference, the supervisor will inform the employee orally and in writing of the recommendation for dismissal and summarize the reasons supporting the recommendation. The employee will then have the opportunity to respond to the facts presented and to add any additional information in the favor.
- After the conference, management will review and consider any new information presented in the conference and will, after twenty-four hours (24) and within three (3) working days after the conference, make a decision

regarding the recommended dismissal. These time frames shall be utilized to minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information.

- If the decision is to dismiss the employee, the County Manager will give the employee written notice of the dismissal and the reasons for the dismissal, the effective date of the dismissal, and the employee's grievance rights. A copy of the written notice of dismissal will be made part of the employee's personnel record.

The County Manager may immediately suspend an employee for twenty-four (24) hours for egregious behavior. In cases of egregious behavior the employee is not given advance written notice of a conference, nor the right to a conference. The County Manager may then dismiss the employee 24 hours after the suspension. In the County Manager's discretion, the effective date for the dismissal of a regular employee for unsatisfactory job performance may be up to two (2) weeks from the date of notice of dismissal. The effective date of the dismissal may not be earlier than the date of the letter of dismissal or it may not be later than fourteen (14) calendar days after the date of the letter of dismissal.

## **Section 912 Employee Grievance**

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A regular employee wishing to grieve a final written warning or dismissal may present the matter using the grievance procedure prescribed in Article 10 of this ordinance. Time limits for filing a grievance do not begin until the employee receives written notice of any applicable grievance rights.

## **Section 913 Inactivation of Warnings**

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Disciplinary actions are deemed inactive after the Department Head or Supervisor notes in the employee's personnel file that the reason for the disciplinary action has been resolved; or eighteen (18) months have passed since the first warning or disciplinary action during which the employee does not have another active warning or disciplinary action and the Department Head has not issued to the employee written notice of an extension to the disciplinary period. Department Heads may consider the history of inactive warnings if additional personal conduct and/or job performance incidents arise.

## **Section 914 Re-employment**

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Currituck County will consider former employees for re-employment. Employees who are dismissed or who resign in lieu of dismissal for unacceptable personal conduct or for grossly inefficient job performance will not be eligible for rehire. Employees leaving the County for any other reason, including performance reasons or position elimination, are eligible to apply for rehire. If a former employee reapplies, the County will review performance and employment history, as well as current qualifications. A review of the requirements for the open position and a determination whether to proceed with the interview process will be conducted based on qualifications and requirements. Rehired former employees will be subject to serving a probationary period and the service date for longevity purposes and the accrual rates will be based upon the full-time re-employment date.

## **Section 915 Reinstatement from Military Leave**

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An employee who enters extended active duty with the Armed Forces of the United States, the Public Health Service or with a reserve component of the Armed Forces will be granted reinstatement rights provided under Federal law. These employees are eligible for reinstatement to the same position or one of like status, seniority and pay. Employees in this category who are reinstated within five (5) years will be credited with previously accrued and unused sick and annual leave. Regular employees returning from military leave are entitled to return to the position they would have had, had they remained continuously employed, with such seniority, status, and pay as they would have had and they shall be entitled to participate in insurance and other benefits offered by the County pursuant to established rules and practices pertinent to other types of leaves of absence. However, if employees are on leave 91 days or more or if they receive a disability in military service which renders them unable to perform the functions of the position they would have had, had they remained continuously employed, they may be offered a position of equivalent seniority, status and pay, provided they meet the qualifications for the equivalent position, in lieu of the position they would have had. If employees cannot become qualified for the position they would have had, they may be placed in their pre-service position so long as they are qualified for the job or could become qualified. If they cannot become qualified for the pre-service position, they may be placed in any other position of lesser status and pay for which they are qualified.

An employee's entitlement to the provisions of this section terminate upon the occurrence of the following events:

- The employee is separated from uniformed service with a dishonorable or bad conduct discharge;
- The employee is separated from uniform service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary of the military branch concerned;
- The County's circumstances have so changed as to make reemployment impossible or unreasonable; or
- The employee gives written notice that the employee will not return to work.