

**AN ORDINANCE AUTHORIZING THE ADOPTION OF AN EMPLOYEE INVOLUNTARY
DISABILITY SEPARATION POLICY AND THE ADDITION OF THE POLICY AS
DEFINED TO THE VILLAGE EMPLOYEE HANDBOOK**

WHEREAS, Brewster Village Council desires to adopt an Employee Involuntary Disability Separation Policy and to modify the Village Employee Handbook to include an Employee Involuntary Disability Separation Policy.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BREWSTER, THAT:

SECTION 1: The Village shall adopt an Employee Involuntary Disability Separation Policy as defined below and shall add Section 9.09 - Employee Involuntary Disability Separation Policy to the Village Employee Handbook as follows:

9.09 INVOLUNTARY DISABILITY SEPARATION POLICY

A. Inability to Perform Essential Functions

An employee who has been initially determined unable to perform the essential job duties of his or her position:

- by a fitness for duty report under 7.15 "Fitness for Duty";
- by his or her own physician and/or psychologist (health care provider);
- by a Bureau of Worker's Compensation physician and/or psychologist (health care provider);
- by their respective state retirement system physician and/or psychologist (health care provider);
- or in other circumstances,

may be involuntarily disability separated from employment with the Village. An involuntary disability separation is not discipline in nature, and shall not be used as a substitute or in place of discipline.

B. Standards for Physicians and/or Psychologists (Health Care Provider)

Any physician utilized, either by the Village or the employee, must be a licensed doctor of medicine or osteopathy who has completed residency training in an accredited medical training program and/or is American Boards of Medical Specialties (ABMS) or American Osteopathic Association (AOA) board certified or international equivalent.

Any psychologist utilized, either by the Village or the employee, must be a licensed psychologist with education, training, and experience in the forensic and/or diagnostic evaluation of mental and emotional disorders.

C. Utilization of Leave

Prior to an involuntary disability separation order, an employee shall be permitted to utilize any accrued but unused sick leave, personal leave, compensatory leave, vacation leave, or other leave, all as set forth under applicable Village ordinances and/or policies.

D. Pre-Separation Hearing

The Village shall conduct a pre-separation hearing prior to making a final determination whether to separate an employee on the basis that the employee is incapable of performing the essential job duties of the employee's assigned position due to the disabling illness, injury or condition. The employee shall be provided written notice of the hearing at least seven (7) calendar days in advance of the hearing. Prior to the pre-separation hearing the employee has the right to examine the Village's evidence of disability. At the hearing the employee has the right to rebut the Village's evidence, and to present testimony and evidence on the employee's own behalf.

If an employee chooses to exercise their right to submit to a fitness for duty examination of a physician and/or psychologist (health care provider) of the employee's choice pursuant to 7.15 Fitness for Duty Policy, the hearing shall be continued for a reasonable period of time to allow for the fitness for duty examination of a physician or psychologist (health care provider) of the employee's choice to be completed. Upon receipt of the report(s) and documentation that was created or reviewed in generating the report(s) of the employee's fitness for duty examination, the pre-separation hearing shall be scheduled. The employee will be provided written notice of the date of hearing at least seven (7) calendar days in advance of the hearing.

E. Determination After Pre-separation Hearing

If the Village determines, after weighing the testimony presented and evidence admitted at the pre-separation hearing, that the employee is capable of performing his or her essential job duties, then the involuntary disability process shall cease and the employee shall be considered fit to perform his or her essential job duties.

If the Village determines, after weighing the testimony presented and the evidence admitted at the pre-separation hearing, that there is substantial, credible medical evidence that the employee is incapable of performing the essential job duties of the employee's assigned position due to the disabling illness, injury or condition, then the appointing authority shall issue an involuntary disability separation order.

F. Notice of Final Determination

At the time the Village makes a final determination whether to separate an employee on the basis that the employee is incapable of performing the essential job duties of the employee's assigned position due to the disabling illness, injury or condition, the Village shall:

- provide an involuntary disability separation order to the employee, and
- notify the employee of the required procedures to apply for reinstatement, and
- notify the employee of his/her appeal rights.

The effective date of separation, for purposes of reinstatement, shall be based on the date on which the employee was no longer performing in active work status due to the disabling illness, injury or condition.

G. FMLA Eligibility

Following an appointing authority issuing an involuntary disability separation order, the employee may be eligible for Family Medical Leave (FMLA). If an employee applies for and is approved for FMLA leave, the employee shall be required to utilize any accrued but unused sick leave, personal leave, compensatory leave, vacation leave, or other leave, all as set forth under this Agreement concurrent with said FMLA leave.

If an employee:

- does not request FMLA leave; or
- requests FMLA but is not approved for FMLA leave; or
- is approved for FMLA leave and then exhausts his or her FMLA leave;

the employee will be compensated for accrued but unused leave in accordance with Village policy (policies).

H. Appeal of Involuntary Disability Separation Determination

An employee may appeal in writing to their Appointing Authority within ten (10) calendar days of receiving an involuntary disability separation order from the Village. In the event that a complaint/investigation is not resolved satisfactorily by their appointing authority, a final appeal may be taken by an aggrieved employee by requesting that an outside third party be picked by the Mayor, Law Director, and Chairperson of the Personnel Committee of Council. This final appeal must be requested within thirty (30) calendar days of a decision.

Upon appeal an order for Involuntary Disability Separation may be vacated and the employee be returned to active employment with the Village, under the condition that the employee is first found to be able to perform the essential job duties of the employee's position by a physician and/or psychologist (health care provider).

I. Application for Disability Benefits

An employee who has been involuntarily disability separated based upon lack of fitness for duty is not prohibited from applying for disability benefits through either the Ohio Public Employees Retirements System (OPERS) or the Police and Fire Pension Fund (OP&F), as applicable.

J. Reinstatement from Disability Separation

1. Application for Reinstatement

After three (3) months of the employee no longer performing in active work status due to the disabling illness, injury or condition, the employee may make a written request to the Village for reinstatement from a disability separation. The employee's request for reinstatement shall be accompanied by substantial, credible medical evidence that the employee is once again capable of performing the employee's essential job duties.

An employee is not eligible for reinstatement if the request occurs later than two (2) years from the date that the employee was no longer in active work status due to the disabling illness, injury, or condition.

2. Review of Application for Reinstatement

- a) Upon receiving a request for reinstatement, the Village shall either reinstate the employee or require the employee to submit to a medical or psychological examination in accordance with 7.15 "Fitness for Duty." The Village will review the medical evidence submitted by the employee, and if applicable the results of a medical or psychological examination conducted in accordance with

7.15 "Fitness for Duty," and make an initial determination of whether or not the employee is capable of performing the essential duties of the employee's position.

- b) The Village shall notify the employee of its determination to approve or deny the reinstatement request no later than sixty (60) days after it receives the employee's written request.
- c) An employee shall not make subsequent requests for reinstatement more than once every three (3) months from the date the employee is notified of a reinstatement denial.
- d) If the appointing authority initially determines that the employee is once again capable of performing the essential job duties of the employee's position, the appointing authority shall reinstate the employee.
- e) If the Village determines that reasonable cause exists to conclude that the employee remains incapable of performing the essential job duties of the employee's position, the Village shall notify the employee, who shall have the ability to request a pre-reinstatement hearing.

3. Pre-reinstatement Hearing

- a) An employee shall request a pre-reinstatement hearing within seven (7) calendar days of notification by the Village that it has determined that the employee remains incapable of performing the essential job duties of the employee's position.
- b) Upon request for a pre-reinstatement hearing, the employee shall be provided written notice at least seven (7) calendar days in advance of the pre-reinstatement hearing. Prior to the pre-reinstatement hearing the employee has a right to examine the Village's evidence of continuing disability.
- c) At the pre-reinstatement hearing, the employee may rebut the Village's evidence and present testimony and evidence on the employee's own behalf.
- d) The Village will weigh the testimony presented and evidence admitted at the pre-reinstatement hearing to determine whether the employee is able to perform the essential job duties of the employee's assigned position.
- e) If the Village finds the employee capable of performing the essential duties of the employee's position, then the Village shall reinstate the employee.
- f) If the Village still finds that reasonable cause exists to conclude that the employee is incapable of performing the essential duties of his or her position due to the disabling illness, injury, or condition, then the Village will not reinstate the employee.

K. Appeal from Reinstatement Denial

An employee may appeal the Village's determination in writing within ten (10) calendar days of receiving a reinstatement denial from the Village, provided that the employee has not previously appealed their disability separation determination or a previous denial of a request for reinstatement (unless the employee has since been deemed by either the Ohio Public Employees Retirements System (OPERS) or the Police and Fire Pension Fund (OP&F), as applicable, and/or other State of Ohio entity to no longer be deemed disabled, in which case the employee may again seek reinstatement).

The appeal may be taken by the employee requesting that an outside third party be picked by the Mayor, Law Director, and Chairperson of the Personnel Committee of Council to hear an appeal.

Upon appeal an order denying reinstatement from Involuntary Disability Separation may be vacated and the employee be returned to active employment with the Village, under the condition that the employee is first found to be able to perform the essential job duties of the employee's position by a physician and/or psychologist (health care provider).

L. Reinstatement

If the Village determines that the employee is to be reinstated, then the employee has a right to be assigned to the position in the classification the employee held at the time of disability separation, or to a position and salary similar to it, with all previous rights, including civil service status if applicable. If the classification the employee held at the time of disability separation no longer exists, is no longer utilized by the Village, or has been filled utilizing the "key" employee exception as set forth in FMLA or otherwise filled, then the employee shall be placed in a similar classification, with comparable compensation and/or benefits as his or her former position.

M. Failure to Apply for Reinstatement

An employee who fails to apply for reinstatement within two (2) years from the date that the employee was no longer in active work status due to a disabling illness, injury, or condition shall be deemed permanently separated from service. However, if the employee has been granted disability benefits by a state retirement system, the requirements of this provision shall apply for up to the maximum number of years established by their respective retirement system, except that a licensed practitioner shall be appointed by the public employees' retirement board and application for reinstatement shall not be filed after the date of service eligibility retirement.

N. Employee Receiving Disability Benefits on Leave of Absence

An employee who has applied for and received a disability retirement from either the Ohio Public Employees Retirements System (OPERS) or the Police and Fire Pension Fund (OP&F), as applicable, shall be considered on leave of absence from the recipient's position of employment for the period of time established by the respective system following the effective date of the recipient's disability benefit, notwithstanding any contrary provisions of this policy.

O. Restoration to Service by Retirement System

If either the Ohio Public Employees Retirements System (OPERS) or the Police and Fire Pension Fund (OP&F), as applicable, certifies to the Village that the recipient is no longer incapable of resuming service, at the recipient's request, the Village shall restore the recipient to the previous position and salary or to a position and salary similar to it, with all previous rights, including civil service status if applicable.

However, the employer is not required to restore the recipient to employment if, prior to either the Ohio Public Employees Retirements System (OPERS) or the Police and Fire Pension Fund (OP&F), as applicable, certifying to the Village that the recipient is no longer incapable of resuming service, the recipient was discharged for just cause for disciplinary reasons, or the recipient voluntarily resigned in lieu of discharge for just cause for disciplinary reasons.

SECTION 2: The above policy replaces any previous version of this policy and supersedes any current policy which may be in conflict with this policy.

SECTION 3: This ordinance shall be in full force and effect at the earliest date provided by law.

Mayor Michael E. Schwab

ATTEST:

Village Clerk Treasurer K. Kris King

CERTIFICATE

I, K. Kris King, hereby certify that the above is a true copy of an ordinance passed at a regular meeting of the Brewster Village Council held on March 6, 2017

Clerk K. Kris King

I, K. Kris King, Clerk of the Council of the Village of Brewster, State of Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by Council as follows: Office of Brewster Utilities, Belloni's IGA, Brewster Federal Credit Union, Post Office and Brewster Laundromat.

Clerk K. Kris King