

**AGREEMENT BETWEEN**

**McClatchy Newspapers, Publisher of THE MODESTO BEE**

**and**

**PACIFIC MEDIA WORKERS GUILD  
TNG-CWA, LOCAL 39521**

**Preamble**

This Agreement is made this \_\_\_\_\_, between the McClatchy Newspapers, a corporation, Publisher of THE MODESTO BEE, hereinafter referred to as "Publisher" or "Company", or "Employer" and the PACIFIC MEDIA WORKERS GUILD TNG-CWA, LOCAL 39521 chartered by The Newspaper Guild, AFL-CIO, hereinafter referred to as the "Guild", for itself and on behalf of the employees represented by the Guild in the Editorial Department of The Modesto Bee.

## **SECTION 1 RECOGNITION**

- 1.1** The Guild's jurisdiction is recognized as applying to the kind of work presently performed or by established practice performed prior to certification by the employees in the unit covered by this Agreement, and any work which may supplant or substitute for such work presently performed. Any work or equipment which supplants the forgoing shall be assigned to employees covered by this Agreement. Work now within the Guild's jurisdiction shall be assigned to employees covered by this Agreement.
- 1.2** Employees covered by this Agreement shall have the right to belong or to not belong to the Guild and the right to pay or to not pay dues and/or fees to the Guild if they are not members.
- 1.3** Any employee who is, or voluntarily becomes a Guild member during the term of this Agreement shall remain a member thereafter during the term of this Agreement except as provided in the following sentence. All employees covered by this Agreement shall have the option to withdraw from the Guild without penalty or recourse and cease paying any dues and/or fees during the first full month after signing this Agreement and during the corresponding month each year thereafter.
- 1.4** At the time of hire and during each window period employees covered by this Agreement shall receive a form letter mutually agreed upon by the Publisher and the Guild explaining the resignation option. Employees covered by this Agreement who are on the Publisher's payroll at the time of the signing of the Agreement shall receive the same letter within thirty (30) days after signing of the Agreement.
- 1.5** For the purpose of this Agreement, resignation from Guild membership shall be defined to mean written notification advising the Guild that the employee is resigning from Guild membership. Failure to do so shall mean continuation of membership. The employee may submit a copy of his/her said resignation to the Publisher.

## **SECTION 2**

### **PART-TIME, TEMPORARY and ON-CALL EMPLOYEES**

- 2.1 (a)** Part-time, temporary, and on-call employees will not be hired where the result is the layoff of a full-time employee except as follows:
- (1)** If the Company reduces the number of publication days, the Company, at its sole discretion, may hire part-time or temporary employees to replace full-time employees as long as the total number of part-time and temporary employees does not exceed two thirds (2/3) of the total number of full-time employees. On/call employees are excluded from this calculation.
  - (2)** Anytime the Company combines a part of its newsroom operations (which includes the online operation) with another McClatchy entity, the Company, at its sole discretion, may hire part-time or temporary employees to replace full-time employees as long as the total number of part-time and temporary employees does not exceed two thirds (2/3) of the total number of full-time employees. On/call employees are excluded from this calculation.
  - (3)** It is understood that any full-time employee whose position is being changed to a part-time position pursuant to paragraphs (1) and (2) above shall have the option to fill the part-time position. Any full-time employee who fills a part-time position pursuant to paragraph (1) and (2) above shall keep his or her hourly rate.
- (b)** Part-time or temporary employees may be hired to fill full-time vacancies as long as the total number of part-time and temporary employees does not exceed two thirds (2/3) of the total number of full-time employees. On/call employees are excluded from this calculation.
- 2.2** The Publisher shall have the right to hire employees in the following classes of employment within the bargaining unit:
- (a)** Full-time employee – A full-time employee is one who is regularly hired to work the regular work week provided for in Section 6.
  - (b)** Part-time employee – A part-time employee is one who is hired and scheduled to work less than the normal work week provided for in Section 6.
  - (c)** Temporary employee – A temporary employee is one employed either full- or part-time for a special project or for a specified time, or hired to substitute for one or more absent employees, such employment not to exceed six (6) months (which time limit may be extended by mutual agreement). An employee, who is hired to substitute for a particular employee absent on leave hereunder, may continue for the duration of the leave.

- (d)** On-call employee – An on-call employee is a part-time employee who is hired on a fill-in basis as work dictates, and except in substitution situations is not regularly scheduled to work. The Publisher is not required to hire an on-call employee for any minimum amount of hours. The on-call employee may accept or reject work opportunities as they please.
- (e)** There shall be a review of hours worked by every part-time, on-call and temporary employee every six calendar months. A report of such review shall be sent to the Guild upon their request.
- 2.3** All of the above classes of employees within the bargaining unit are covered by all provisions of this Agreement except as otherwise expressly provided in this or other sections of the Agreement.
- 2.4** This section, and other provisions of the Agreement, shall not apply to part-time or temporary employees, or employees doing other work not done regularly by staff members, nor shall this section and other provisions of the Agreement apply to outside correspondents, or other contractors.
- 2.5** For all part-time employees, whether regular, temporary, or on-call, the number of hours worked each week is at the sole discretion of the Publisher.
- 2.6 (a)** Part-time employees shall be exempt from Sections 6.5 (Call Back) and 14.2 (Leaves of Absence) of this Agreement.
- (b)** Temporary full-time employees shall be exempt from sections 7.1 (Severance Pay), 8.1 (Vacation), 8.2 (Vacation Credit), 14.2 (Leaves of Absence) and 19 (Sick Leave) of this Agreement. Vacation (8.1) and vacation credit (8.2) will be given to temporary full-time employees if they work for more than six consecutive months.
- (c)** Temporary part-time employees shall be exempt from sections 6.5 (Call Back), 6.7 (Schedules), 7.1 (Severance Pay), 8.1. (Vacation), 8.2 (Vacation Credit), 14.2 (Leaves of Absence) and 19 (Sick Leave) of this Agreement.
- (d)** On-call employees shall be exempt from sections 6.3 (Personal Time Off), 6.5 (Call Back), 6.7 (Schedules), 7.1 (Severance Pay), 14.2 (Leaves of Absence) and 19 (Sick Leave) of this Agreement.

## **SECTION 3 GENERAL**

- 3.1** This Agreement covers all employees in the Editorial Department of the Publisher except the following positions are excluded from the application of this Agreement: Editor and Vice President of News; Managing Editor/On-Line; Managing Editor/Print; Managing Editor Production; Opinion Page Editor; Online Editor; Business Editor; News Night Editor; Director of Multimedia Images; Director of Newsroom Resources; Features-Day Editor; City Editor; Assistant Editor (3); Systems Editor; Associate Editor; Assistant Managing Editor News; Sports Editor; and Assistant Sports Editor.
- 3.2 (a)** As soon as possible and in any event within one week after the employee begins work at The Modesto Bee, the Publisher shall furnish the Guild in writing the following information for each employee:
- (1)** Name, address, sex and birth date
  - (2)** Date of hire
  - (3)** Classification and Job Title
  - (4)** Job performance review date
  - (5)** Salary
  - (6)** Employee ID
  - (7)** Experience level (where applicable)
  - (8)** Department
  - (9)** Ethnicity
- (b)** The Publisher shall notify the Guild in each case of the termination of an employee covered by this Agreement as soon as possible and in any event within one week of termination.
- (c)** The Publisher shall notify the Guild in writing of any change in classification other than changes resulting from operation of this Agreement.
- (d)** The Publisher shall supply the Guild on request, but not more than twice a year (inclusive of re-openers), with a list containing the following information on employees covered by this Agreement:
- (1)** Name, address, sex, and birth date
  - (2)** Date of hire
  - (3)** Classification and Job Title
  - (4)** Job performance review date
  - (5)** Salary
  - (6)** Employee ID
  - (7)** Experience level (where applicable)
  - (8)** Department
  - (9)** Ethnicity

- (e) In the event the Guild requests information for purposes other than bargaining, the Guild agrees to pay the Company the necessary administrative costs to provide such information.
- 3.3** When there is an opening for positions covered by this Agreement the Publisher agrees to give special consideration to present employees who possess the necessary qualifications for the position to be filled. Particular consideration will also be given to the opportunities for lower classifications to substitute for higher classifications during vacation absences where possible. No employee shall in any way be penalized for refusing to accept a promotion. Employees promoted to another covered classification shall be given a trial period of three (3) months. During such trial period, the employee shall receive the rate of pay for the higher classification, and such rate shall be higher than their previous rate. During or at the end of such a trial period, if the employee elects to return to the classification from which he or she advanced, or the employee is judged to have failed the trial, the employee will be returned to his/her classification and the rate of pay may be adjusted, at the option of the Publisher, to what it would have been had he or she remained in the lower classification. The return to the previous classification may, at the option of the Publisher, be delayed up to six (6) months, provided the employee is paid at the higher classification, and all time worked is applied to experience at the lower classification. If judged to be competent in the new position, the trial period shall be included for all purposes in determining the length of service in the classification to which he or she advanced.
- 3.4** Whenever the Publisher seeks to fill a position by initiating a search for applicants outside of the staff, the Publisher, whenever practical, shall afford the Guild an opportunity to refer an applicant.
- 3.5** Should the Publisher create a new job classification, it shall establish a salary for the classification and furnish the Guild with a job description. No later than forty-five (45) days thereafter, the Guild may request that the parties meet for the purpose of negotiating a new salary for said classification. Pending the completion of these negotiations, the Company may implement its proposed salary for the new job classification.
- 3.6** No employee shall be transferred by the Publisher to another McClatchy Enterprise without the employee's consent. If the employee seeks a transfer from The Modesto Bee to another McClatchy Enterprise, he or she shall receive no expenses. If The Modesto Bee asks an employee to transfer to another McClatchy Enterprise and the employee consents, the employee shall receive, in advance, transportation expenses for the employee and family. The Publisher shall pay for the moving of household effects.
- 3.7** Notification to the Guild as required under this Agreement shall be satisfied by first class mail to 433 Natoma Street, 3<sup>rd</sup> Floor, San Francisco, CA 94103, unless otherwise agreed to between parties.

## **SECTION 4**

### **SALARY DIFFERENTIALS**

- 4.1** An employee who works 50 percent or more of any shift in a higher classification covered by this Agreement shall receive the rate of pay for the higher wage classification for that shift. This provision does not apply to those jobs which have a differential as set forth in this Section 4.
- 4.2** Any employee covered by this agreement, who performs management duties of an excluded position for more than 50 percent of a shift, shall receive a differential of \$14.00 above his or her then current salary rate for any day he or she performs such work.
- 4.3** The payment of a differential to any employee under this Section shall not affect any merit compensation received by such employee while so substituting. The Section shall not apply to any employee already receiving a higher rate of pay than for the position in which he/she is substituting or to learners or apprentices.
- 4.4** Any employee on the payroll presently receiving a differential of \$6.00 per shift and who is regularly required to work after 8 P.M. or before 6 A.M. shall continue to receive such differential for the duration of the Agreement. Effective one week following the signing of this Agreement all other employees shall receive a shift differential of \$4.00 per shift when required to work after 8 P.M or before 6 A.M.

## SECTION 5 SALARIES

**5.1** Employees covered by this Agreement who have completed the equivalent of one year of continuous full-time employment with the Publisher shall receive annual job performance reviews on their job performance review date. It is agreed that all on-call and part-time employees will receive at least one performance review during the duration of this Agreement, regardless of the number of hours they have worked.

(a) Performance will be rated and if there are monies in the merit increase pool employees will receive the following percentage of the merit increase pool percentage.

### Effective through 12/31/2012

<u>Rate of Pay</u>	<u>Rating</u>			
	Outstanding	Exceeds	Meets	Fails
<b>Over \$1350 Lump Sum</b>	83.33%	50.0%	33.33%	0.0%
<b>\$1,250 to \$1,349 per week</b> (\$33.33 - \$35.97 per hour)	83.33%	50.0%	33.33%	0.0%
<b>\$900 to \$1,249 per week</b> (\$24.00 to \$33.32 per hr)	100.0%	75.0%	50.0%	0.0%
<b>\$700 to \$899 per week</b> (\$18.66 to \$23.99 per hr)	133.33%	108.33%	66.67%	0.0%
<b>Up to \$699 per week</b> (up to \$18.65 per hr)	166.67%	133.33%	100.0%	0.0%

(b) Provide for a 2% merit pool for 2012 to be effective January 1, 2012, and that 5.1 (a) is effective through 12/31/2012. There is no requirement that there be monies put in the merit increase pool in any year.

(c) Unpaid leaves of absence of more than thirty (30) days will extend the annual performance review date by the number of days on leave.

(d) If there are monies put in the merit increase pool in a given year, the average percentage increase of those employees eligible to be considered for a merit pay increase in that year shall be at least 75% of the merit increase pool percentage for that year.

- (e) The following provisions of Section 5 shall not be subject to the provisions of Section 9 (Settlement of Disputes) of the Agreement: 5.1(b), 5.2, 5.3, 5.4, 5.8, 5.11, and 5.12.
- 5.2** Merit increases shall be granted based on job performance and shall go into effect on or before the effective date of the job performance review.
- 5.3** Any employee who receives a Job Performance Review may, within three weeks, appeal his or her performance review and/or salary increase determination.
- (a) The employee shall first take his or her appeal in writing to his/her immediate supervisor.
- (b) Should the immediate supervisor fail to resolve the issue to the satisfaction of the employee, within one week thereafter the employee may appeal to the Executive Editor or his/her designee.
- (c) Should the Executive Editor fail to resolve the issue to the satisfaction of the employee, within one week thereafter the employee may appeal to Publisher or his/her designees. The decision of the Publisher or his/her designees shall be final.
- (d) Upon the request of the employee, the Guild may participate with the employee in the appeal process.
- 5.4** Any employee who does not receive a salary increase as a result of his or her annual Job Performance Review shall, upon request, be re-evaluated within three (3) months of his or her annual review or resolution of the appeal, whichever occurs later. This interim review shall be subject to the appeal process of Section 5.3 and its delivery date including salary increase, if any, shall become the date of the employee's new Job Performance Review date.
- 5.5** (a) Salary increases granted pursuant to this Section 5 shall be in addition to the employee's base weekly or hourly rate. Lump sum payments as outlined in 5.1 (a) will not be in addition to the employee's base weekly or hourly rate.
- (b) The term "base weekly salary" is understood to mean straight-time salary paid and does not include any overtime, differentials, allowances, or other pay provided elsewhere.
- (c) Notwithstanding 5.5 (a) above, the Publisher may elect to pay merit increases, if any, in a lump sum to an employee who transfers from an exempt position, outlined in section 3.1 into the bargaining unit. Said "red circled" employees will be eligible for their merit increase, if any, to be added to their base pay, when their weekly base salary falls below 120 percent of the median base salary within the applicable classification.

**5.6 (a)** It is understood that the application of this provision shall provide that upon request of the Publisher and with the consent of the employee, an employee may be transferred to any lower paying job as specified in this Agreement. Under such circumstances the employee shall retain his/her salary at the time of transfer. If an employee requests to be transferred to a lower paying job or his/her previously held job, and the Publisher agrees, the employee's salary at the time of transfer may be retained at the Publisher's option.

**(b)** In the event the Publisher demotes an employee to a lower paying job for disciplinary reasons, the employee's salary shall be reduced to no less than the established minimum for the lower rated job. Such demotions must be for just cause only.

**5.7** Employees covered by this Agreement shall be assigned to the following classifications and shall be paid no less than the minimum base salary established herein for their classification.

**CLASSIFICATION NO. 1:** Reporters, copy editors, sports writers, photographers, artists, outside bureau correspondents, and on-line content producers.

**Effective through 12-31-2014**

	<u>Hourly</u>	<u>Weekly</u>
Minimum base salary	<b>\$18.53</b>	<b>\$695</b>
(a) With more than six years experience as defined in 5.8.	<b>\$21.20</b>	<b>\$795</b>

**CLASSIFICATION NO. 2:** Information and Research Specialist.

**Effective through 12-31-2014**

	<u>Hourly</u>	<u>Weekly</u>
Minimum base salary	<b>\$15.87</b>	<b>\$595</b>

**CLASSIFICATION NO. 3:** Newsroom Assistant.

**Effective through 12-31-2014**

	<u>Hourly</u>	<u>Weekly</u>
Minimum base salary	<b>\$11.20</b>	<b>\$420</b>

**CLASSIFICATION NO. 4:** Reporters, photographers, or copy editors assigned to non-daily publications.

**Effective through 12-31-2014**

	<u>Hourly</u>	<u>Weekly</u>
Minimum base salary	<b>\$12.53</b>	<b>\$470</b>

**CLASSIFICATION NO. 5:** Interns, beginning part-time or temporary employees assigned to any of those jobs enumerated in Classification No. 1 during first year of employment with the Publisher.

**Effective through 12-31-2014**

	<u>Hourly</u>	<u>Weekly</u>
Minimum base salary	<b>\$13.20</b>	<b>\$495</b>

**CLASSIFICATION NO. 6:** Full-time columnists.

**Effective through 12-31-2014**

	<u>Hourly</u>	<u>Weekly</u>
Minimum base salary	<b>\$26.53</b>	<b>\$995</b>

**5.8** Newspaper, news or feature syndicate, press association, or recognized news magazine and experience in other related fields experience shall be given first consideration in establishing starting pay levels for employees covered by this Agreement who write or edit news. In respect to establishing the starting pay level for photographers and artists, first consideration will be given to all regular employment on a newspaper, recognized news magazine or corresponding experience in comparable business or in another business in which they perform work similar in character to that required by the Publisher.

**(a)** Experience level for employees in Classification 1, shall be determined by the Publisher at the time of hire. Generally, full credit will be given for daily newspaper publications and half credit for weekly paid circulation newspaper publications. Current online content producers shall receive half credit for daily newspaper publications experience, and the experience level of those hired after the signing date of this agreement shall be determined at the time of hire as stated above.

**(b)** Experience levels for applicable employees who are covered by this Agreement who are on payroll as of the effective date of the Agreement shall be determined by the Executive Editor based on total regular hours worked in Classification 1 and information provided on the employee's employment application.

**(c)** Subsequent credit for experience shall be based upon total regular hours worked in Classification 1 and will only be granted for periods in which the employee has received a performance rating of meets standards or higher.

**(d)** Employees described in 5.8 (b) may appeal their experience level rating in writing to the Human Resources Director. The decision of the Human Resources Director shall be final.

- 5.9** Nothing in this Agreement shall prevent employees from bargaining individually for salary increases. Any salary increases granted pursuant to this provision shall be added to employee's then current base salary and the sum shall be that employee's new base salary.
- 5.10** Nothing in this Agreement shall prevent the Publisher from conducting job performance reviews and granting merit increases on a more frequent basis than is outlined in this Agreement. Any salary increases granted pursuant to this provision shall be added to the employee's then current base weekly salary and the sum shall be that employee's new base weekly salary.
- 5.11** It is understood that the wages of employees covered by this Agreement may be subject to freezes, delays or reduction of planned increases if the non-bargaining employees and Management of The Modesto Bee also experience any of these wage control actions due to economic reasons. It is understood that these wage actions will be at no greater magnitude than those experienced by non-bargaining and Management of The Modesto Bee. The Publisher agrees to give the Guild at least 30 days notice of the wage action to allow Guild and Publisher representatives to meet to discuss alternative solutions. The Publisher will make the final decision and has the sole authority to determine whether or not economic reasons exist.
- 5.12** The Guild shall have the right to verify any freeze, delay or reduction of planned increases through a mutually agreed upon independent auditor who will be allowed access to payroll records. It is understood that the independent auditor will only have access to Modesto Bee payroll records.
- 5.13** Within one month of the payment of a merit increase the Publisher will furnish the Guild with the name, classification, previous salary, merit increase and new salary of the eligible bargaining unit employee.
- 5.14** The Company shall offer direct deposit of employee's earnings on a voluntary basis.
- 5.15** The Letter of Agreement dated March 26, 2009 shall be attached to and incorporated into the new agreement except that Paragraph 7 has been included in Section 8, Vacation.

## **SECTION 6 HOURS**

- 6.1 (a)** The normal workweek for full-time employees shall be thirty-seven and one-half hours (37-1/2) consisting of seven and one-half (7-1/2) hours per day, five (5) days per week. Nothing in this Article shall be construed as guaranteeing the number of hours in the workday or the number of days in the workweek.
- (b)** Notwithstanding any other provisions of this Agreement by mutual agreement between the Guild and the Publisher, and after notification and assent of the employee, any employee may be scheduled to work a four-day week consisting of the applicable total weekly hours specified in paragraph 6.1 (a) of this Section.
- (c)** Flex Time – By mutual agreement between the Publisher and the employee, regular full-time employees may work a 37.5-hour fluctuating work week. The Publisher will notify the Guild of any such employee who works a fluctuating work week. Overtime shall be paid to an employee on a fluctuating work week who works hours in excess of the hours scheduled for any particular day. Upon four weeks (28 calendar days) prior notification to the Publisher, the employee working a fluctuating work week may return to a normal work week. Upon four weeks (28 calendar days) prior notification to the employee working a fluctuating work week, the Publisher may return the employee to a normal work week. The granting or denial of a fluctuating work week request by the Publisher shall not constitute a precedent for any other such requests and the Publisher shall have the complete discretion to decide whether or not to grant any request.
- (d)** Telecommuting – By mutual agreement between the Publisher and the employee, regular full-time employees may work a 37.5-hour work week from locations other than the Publisher's Modesto facility. The Publisher will notify the Guild of any such employee who enters into an arrangement of this kind. Upon four weeks (28 calendar days) prior notification to the Publisher, the employee may cancel an arrangement of this kind and return to work at the Publisher's Modesto facility. Upon four weeks (28 calendar days) prior notification to the employee working under this arrangement of this kind, the Publisher may cancel the arrangement and require the employee to return to work at the Publisher's Modesto facility. The granting or denial of a telecommuting work request by the Publisher shall not constitute a precedent for any other such requests and the Publisher shall have the complete discretion to decide whether or not to grant any request.
- 6.2** Days off shall be consecutive insofar as practicable which considers the efficiency of the department.
- 6.3** The Publisher may allow an employee time off for personal business, or may agree to a schedule change requested by an employee. If an employee is allowed time off during a regular working day to handle personal matters, the Publisher may require that this time be made up within the same week but not on the employee's day off. If an

employee requests and receives a day off, other than his or her regular day off, he or she shall make up such time by working his or her regular day off. Agreement to any change for personal reasons is at the option of the Publisher, who shall not be penalized in terms of overtime, differentials, premiums, or in any other form, for such agreement. All applicable overtime, compensatory time, differentials, premiums, etc., shall be paid if a requested schedule change is work related rather than for personal reasons.

- 6.4. (a)** The Publisher shall compensate for all overtime at the rate of time and one-half in cash or check. Overtime shall be defined as any hours actually worked in excess of eight hours (8) in a day or in excess of forty (40) in a workweek.
- (b)** In lieu of overtime, the Publisher may provide compensatory time off provided that the affected employee opts for compensatory time off at the rate of time and a half.
- 6.5** An employee required to return to work after his or her regular working day shall be paid for the time worked, but not less than two (2) hours plus time traveled to and from work, all at the overtime rate.
- 6.6** The Publisher shall cause a record of all overtime to be kept and employees shall report all overtime worked within each payroll period. Such record shall be made available to the Guild upon request.
- 6.7** Work schedules shall be posted one week in advance of the week for which they apply, and any work performed at hours not scheduled shall be considered overtime. It is understood that in the case of illness, failure to report, dismissal of an employee or absence due to jury duty, another employee may be required to step in and shall be paid at the regular rate of pay. The provisions of this Section shall not apply to employees on overnight out-of-town assignments, provided the employee is notified (of such schedule change) prior to the conclusion of his or her current shift. In addition, the work schedule for any employee may change at anytime without payment of overtime if in the judgment of the Publisher, it is necessary for business reasons.
- 6.8** That part of a shift worked that is required by the manager or supervisor within any period less than twelve (12) hours after the completion of the preceding regular shift shall be paid for at the overtime rate of time and one-half or with compensatory time off in accordance with Section 6.5 of the Agreement.
- 6.9** Employees scheduled to work on Sunday as one of his or her regular shifts in the five (5) day work week shall receive two (2) consecutive days off or the employee shall have the option of split days off, one of which shall be Saturday consistent with operational conditions.
- 6.10 (a)** Holidays – The following holidays or the days observed as such shall be granted to all employees with full pay: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas. All regular full-time employees are entitled to a birthday holiday immediately following their date of

employment. The birthday holiday must be taken within thirty (30) days of the actual birthday and must be prescheduled by mutual agreement with the employee's supervisor. In addition, all regular full-time employees are entitled to an annual Diversity Day. The diversity holiday must be in recognition of an event of cultural, ethnic, or religious significance to the employee and must be prescheduled by mutual agreement with the employee's supervisor. Each year the Publisher will designate the "default" diversity holiday. Employees hired after that date will be eligible for a diversity holiday starting the following year. Birthday and diversity holidays cannot be carried over from year to year and are not eligible for payment upon termination.

**(b)** The work week for any employee in which any of these holidays fall shall consist of four (4) days, or three (3) days pursuant to paragraph 6.1(b) of this section totaling the number of hours applicable to the employee as specified in paragraph 6.1 of this Section, excluding the holiday. Notwithstanding the definition of a holiday work week set forth in the preceding sentence, for the purpose of the calculation of weekly overtime pursuant to Section 6.15 of the Agreement, an employee who receives holiday pay for one of the above listed holidays but does not work on that holiday, shall not be considered to have actually worked on that day. Any employee required to work on the holiday shall receive a minimum of a full day's pay at straight time, in addition to his or her regular weekly salary. If an employee is required to work longer than two-thirds (2/3) of a full shift on any such holiday, he or she shall be paid for all time in excess thereof at the rate of one and one-half the regular rate.

**6.11** Part-time, temporary, and on-call employees will not receive holiday pay except under the following conditions.

**(a)** They will be paid time and one half for all the time actually worked on a holiday.

**(b)** If normally scheduled but not required to work, they will receive straight time pay for the number of hours they would normally work as holiday pay.

**6.12** Outside bureau correspondents shall be exempt from all the provisions of Section 6, (except 6.2, 6.6, and 6.10) and may fluctuate their daily work hours during the week in order to provide that the regular work week shall consist of 37-1/2 hours. Upon proper authorization, outside bureau correspondents working in excess of 37-1/2 hours shall be compensated at straight time for hours in excess of 37-1/2 up to 40 hours, and shall be compensated for hours in excess of 40 at the overtime rate or with compensatory time off in accordance with Section 6.4 of the Agreement. Present practice shall prevail for employees substituting for outside bureau correspondents.

**6.13** The Publisher, upon 90 days notice to the Guild, may change to a weekly or biweekly pay cycle. The Publisher will not make more than one pay cycle change during the life of the Agreement.

**6.14** Calculation of weekly overtime, hours worked in excess of forty (40), shall be based on actual hours worked.

## **SECTION 7 SEVERANCE PAY**

- 7.1** Severance pay shall be paid to all employees laid off in a lump sum equal to two weeks pay for every year of service or major fraction thereof up to twenty six (26) weeks, such pay to be computed at the highest weekly rate of salary received by the employee during service with the Publisher. Part-time employees shall receive severance pay based upon their service on a pro rata basis.
- 7.2** Severance pay need not be paid an employee discharged for just cause or self-provoked discharge for the purpose of collecting severance pay, or to an employee who is retired from The Modesto Bee, deceased or leaves of his own volition. The payment of severance in any of the above cases shall be optional with the Publisher.
- 7.3** From severance pay the Publisher may deduct any levy or tax to which the employee is subject under State or Federal legislation.
- 7.4** A person re-employed who has received severance pay becomes a new employee of the Publisher as regards severance pay.

## **SECTION 8 VACATION**

- 8.1** The Publisher and the Guild agree that vacation will be accrued at the following rate:
- (a)** Regular full-time employees shall earn .0577 hours of vacation time for each hour of straight time paid, up to a maximum of three (3) weeks per year during the first five (5) years of service.
  - (b)** Regular full-time employees shall earn 0.0769 hours of vacation for each hour of straight time paid, up to a maximum of four (4) weeks per year during the sixth and subsequent years of service.
  - (c)** Regular part-time and on-call employees working in the Editorial Department of the Publisher prior to May 18, 1990 shall receive vacation credit on a pro rata basis. Regular part-time and on-call employees hired to work in the Editorial Department of the Publisher on or after May 18, 1990 shall not receive vacation credit.
  - (d)** Employees may take vacation as it is earned.
- 8.2** Vacation credit shall begin with the date of employment. The Publisher shall arrange the vacations in the Editorial Department in accordance with the needs of the office and shall give first consideration to length of service in assigning vacation periods. With the consent of the employee and the Publisher, the vacation may be split. In those departments where it is impossible to schedule all employees to take vacation during the Christmas, Easter or summer school vacation period, each employee shall have the option of taking a vacation in one of these three periods at least once every three years notwithstanding seniority.
- (a)** The maximum amount of vacation which an employee may accrue is one week over the employee's annual vacation entitlement. An employee shall not earn vacation during the time the employee has the maximum vacation accrual. Accrual of unused vacation beyond one week over the employee's annual vacation entitlement shall only be by mutual agreement between the employee and the Publisher.
  - (b)** In any calendar year, the Company may require employees to use some or all vacation accrued in a given year and/or some or all of the vacation balance that the employee carried into the given year. Employees will be given 30 days notice prior to vacation use being mandated, although employees may begin scheduling vacation as soon as reasonable. The Company will attempt to accommodate any employee vacation requests in accordance with business needs. However, the Company shall make the final decisions on vacation request and scheduling.
- 8.3** An employee whose vacation period includes one of the designated holidays shall receive an additional day off, the date of which shall be set by mutual agreement

between the employee and the Publisher. Should such agreement not be reached, the day shall be added to the employee's vacation.

- 8.4** Upon termination of employment, an employee (or the employee's heirs or estate in case of death) shall receive accrued vacation pay.

## **SECTION 9 SETTLEMENT OF DISPUTES**

- 9.1** It is agreed between the parties that fruitless controversies must be avoided and every effort should be made to maintain a harmonious relationship. To this end both parties will, in every instance, give prompt attention to disputes and will in good faith endeavor to settle all differences by amicable discussions. However, only grievances as defined in Section 9.2 are subject to arbitration as provided in this Section.
- 9.2** For all purposes of this Agreement, a grievance is any dispute or controversy between the Publisher and the Guild, or between the Publisher and any of the employees covered by this Agreement, arising and filed during the term of this Agreement involving the meaning, interpretation, application, or alleged violation of the provisions of this Agreement, or the discharge or other discipline of employees. All grievances (except grievances concerning the no-strike clause under Section 23 of this Agreement) shall be handled exclusively in the following manner.
- 9.3** Any employee who believes he or she has a problem or complaint should bring it to the attention of his or her immediate supervisor, as soon as possible after the problem arises. Both parties agree that problems should be settled between the employee and immediate supervisor whenever possible.

### **9.4 Step 1 of Grievance Procedure**

Should the procedure above fail to solve the problem and the Guild wishes to pursue the issue as a grievance, or if the grievance originates with the Guild, the unit chairperson (or other designated Guild official) shall notify the Executive Editor (or other designated Company official) of the grievance and request a meeting within (21) calendar days after the action, inaction, occurrence, or condition constituting the grievance, or (21) calendars after any of the above reasonably should have been known to the Guild with reasonable diligence. In the case of a discharge, the grievance would be handled as described in Section 9.5 upon proper notice as required in that Section. Should the grievance originate with the Company, the Executive Editor (or other designated Company official) shall notify the Guild Unit Chairperson (or other designated Guild official) of the grievance and request a meeting within (21) calendar days after the action, inaction, occurrence, or condition constituting the grievance, or (21) calendar days after any of the above reasonably should have been known to the Company with reasonable diligence. The meeting will be held within twenty-one (21) calendar days of it being requested. The respondent, whether the Company or the Guild, must respond to the grievance within twenty-one (21) calendar days from the time the meeting is held.

## **9.5 Step 2 of Grievance Procedure**

If the grievance is not satisfactorily settled as provided in Section 9.4, either the Guild or the Company, as the case may be, shall have twenty-one (21) calendar days from the conclusion of Step 1 (whether at that meeting or a later response) to request a final meeting between the Publisher and the Guild Administrative Officer (or their designees) to attempt to settle the grievance. Such request will be in writing to the Publisher or the Guild Administrative Officer, and shall include the specific nature of the grievance and the particular provisions of the Agreement involved. Upon proper written request, such meeting will be held within (21) calendar days of receipt of the request. Respondent will respond in writing within twenty-one (21) calendar days of the date of the meeting. In the case of a discharge grievance, the Guild has 72 hours from the notice of the discharge to request a meeting between the Publisher and the Guild Administrative Officer (or their designees) in the manner described in this Section. In the case of discharge, the requested meeting will be held within 72 hours of the receipt of written request, and the Publisher (or its designee) will respond in writing no later than 72 hours after the meeting.

- 9.6** If the grievance is not settled in accordance with the foregoing procedure, either the Company or the Guild may refer the grievance to arbitration by written certified mail notice to the other party, no later than twenty-one (21) calendar days after the receipt of response provided for in Section 9.5. After timely written certified mail notice by either party, the Company and the Guild will immediately attempt to agree upon an impartial arbitrator. In the event agreement upon an arbitrator cannot be reached twenty-one (21) calendar days after receipt of request for arbitration, either the Company and the Guild (or their designees) shall choose an arbitrator from the following panel: John Kagel, Ken Silbert, Barbara Chvany, Alexander Cohn, Charles Askin, and Thomas Angelo. The arbitrator shall be chosen by the alternate striking method. The party entitled to make the first strike shall be determined by lot.
- 9.7** The expense of arbitration (including arbitrator's fee, hearing room, coffee, and a reporter's transcript for the impartial arbitrator's use) shall be paid by the losing party, but each party shall bear its own costs of advocacy, witnesses, and a reporter's transcript for its own use. Each party shall have the right to appearance by counsel of its choice and to present evidence subject to the right of cross-examination. Each party shall have the right to present written arguments by briefs after close of the evidence. The decision of the arbitrator shall be in writing and signed by the arbitrator.
- 9.8** The said arbitrator shall have no authority to ignore, add to, subtract from, alter, amend, change or nullify the terms of this Agreement in any way or to render an award which is in conflict with any of the provisions or the essence of this Agreement. The arbitrator's only jurisdiction is strictly limited to application and interpretation of this Agreement and to the facts of the particular grievance arising and filed during the term of this Agreement properly before him/her and his/her decision and award shall be based solely upon his/her interpretation of the meaning or application of the terms of this Agreement to the facts of the grievance as presented.

- 9.9** Time is of the essence in all of the grievance and arbitration procedures in this Agreement. Failure to comply with and fully satisfy any of the said time limitations constitutes waiver of the alleged grievance and all rights, claims and actions for all purposes except as otherwise specifically provided in the following sentence. The said time limits may be extended by written mutual agreement between the Guild and the Company.
- 9.10** Renewal or extension of this Agreement, or the terms of successor Agreements, are not subjects of any grievance or arbitration under this Agreement and are beyond the jurisdiction of any arbitrator.
- 9.11** The arbitrator shall have the authority to rule on the subject of arbitrability, and matters pertaining to preparation, presentation, or other procedural differences within the limits and restrictions set forth elsewhere in this Section.
- 9.12** Any decision, award, determination or other action by any arbitrator shall be subject to judicial review by courts of competent jurisdiction in accordance with applicable provisions of the law, including but not limited to those relating to vacating arbitration decisions and the interpretation and construction of Agreements.

## **SECTION 10 EXPENSE and EQUIPMENT**

- 10.1** The Publisher shall pay all legitimate expenses incurred by the employees in the service of the Publisher. The Company will reimburse for the actual cost of cell phone service, up to a maximum of \$30 per month, for each employee whom the Company requires to regularly use his/her cell phone. The Company will reimburse for the actual cost of Internet service, up to a maximum of \$30.00 per month, for each employee the Company requires to regularly work online from locations outside The Modesto Bee offices. At its sole discretion, the Company may terminate either or both of these allowances by no longer requiring the employee to regularly use his/her personal equipment.
- 10.2** Photographic equipment required by the Publisher to be used by photographers shall be provided by the Publisher.
- 10.3** If an employee is required to use his or her automobile on a regular basis on the business of the Publisher, such automobile shall be covered by public liability insurance and property damage insurance in addition to regular personal auto insurance. The coverage limits for the public liability and property damage insurance shall be at least, \$50,000/\$100,000/\$50,000 to a maximum of \$200,000/\$500,000/\$100,000. The Publisher agrees to pay one-half of the premium for the public liability insurance and property damage insurance. The Publisher has the right to request written confirmation of this coverage on an annual basis. An employee's request for reimbursement pursuant to the provision shall be submitted on the claim for reimbursement form (Attachment A).
- 10.4** Until October 1, 2012 employees who drive their automobile in the business of the Publisher shall be reimbursed for all miles driven at the IRS standard rate on a prospective basis, upon notification of the Company. Effective October 1, 2012, the Company may at its discretion and as often as it wishes, change the mileage reimbursement rate for employees provided that the following two conditions are met:
- a) The mileage reimbursement rate implemented must be at least 75% of the IRS standard rate; and,
  - b) The mileage reimbursement rate implemented for bargaining unit employees must be equally applicable to non-bargaining unit employees.
- 10.5** Employees who provide their automobiles in the business of the Publisher on a casual basis shall be paid a minimum of five dollars (\$5.00) per trip provided no such employee shall receive more than two trip minimums (\$5.00 for the first trip and \$4.00 for the second) for a total of nine dollars (\$9.00) in one day. If the rate for such employee, based on actual miles traveled for the day, exceeds the limitation of two trip minimum rates, the employee shall be paid the mileage rate.

- 10.6** Employees using their automobile for company business should submit their actual weekly mileage and parking expenses on the required expense reimbursement form provided by the Publisher.
- 10.7** Alterations to personal cars to install and/or remove company equipment shall be paid for and corrected at the Publisher's expense, if such installations or removals are done at the direction of the Company.
- 10.8** The Publisher may require any employee to furnish his/her own automobile in the business of the Publisher.

## **SECTION 11 OUTSIDE ACTIVITY**

- 11.1 (a)** Employees shall be free to engage in activities on their own time not performed by enterprises in competition with The Modesto Bee, Modbee.com, or any other enterprises related to the Company. The Publisher shall reasonably determine what is considered competition. Employees are prohibited from engaging in activities that would compromise the editorial integrity of The Modesto Bee. Without written permission from the Publisher or its representatives, no employee shall use the name of the Publisher or his/her connection with the Publisher or any feature title or other materials of the Publisher to exploit in any way his/her outside activities.
- (b)** It is recognized that an employee may engage in some activities or work restricted by (a) above, provided the employee has informed the Publisher in writing or by email and the Publisher or its representative has approved of the proposed activities or service in advance. Approved representatives include The Modesto Bee Editor or his or her designee.
- (c)** If, with the approval of the Publisher, an employee enters into an agreement to appear on any broadcast or cable television station or radio station or on-line publication as part of such agreement, the employee shall request that he/she be introduced during such appearance as an employee of the Publisher.

## **SECTION 12 NATIONAL EMERGENCY**

- 12.1** Any employee who is required by the United States or voluntarily enlists or reenlists into the Armed Forces or military reserves or National Guard will be eligible for a military leave of absence. The period of such absence shall be considered employment time with the Publisher in computing severance pay.
- 12.2** The Publisher will pay employees required by the United States to enter active military service, or those employees who voluntarily enlist, the difference between their military or guard pay and their regular base pay for the first 90 calendar days of their military service.
- 12.3** The Publisher will pay full-time employees required to attend military reserve training the difference between their military pay and their regular base pay for a period of up to two weeks per year.
- 12.4** During the time the Publisher is paying the difference between military pay and base pay, the Publisher will continue to pay the company portion of the employee's and their dependents' group health insurance.
- 12.5** An employee on military leave may elect to receive part or all of his or her accrued vacation and will earn additional vacation based on regular hours paid by the Publisher.
- 12.6** A regular employee who returns from military leave is entitled to qualify for re-employment rights as long as the Publisher is in the same business and employs individuals in similar classifications to that previously held by the employee. If the Publisher is no longer in the same business and/or no longer employs individuals in similar classifications, the employee would be eligible for the appropriate severance as described in Section 7.
- 12.7** To qualify for re-employment rights a returning veteran or reservist must meet the following criteria:
- (a)** The employee must have satisfactorily completed their military service; i.e., discharged or released under honorable conditions, and
  - (b)** For leaves up to 90 days: The employee must apply for re-employment within 31 days after the release from active duty or discharge from hospitalization due to military service.

For leaves in excess of 90 days: The employee must apply for re-employment within 90 days of the date of release of military service or discharge from hospitalization due to military service.

- (c) The right to re-employment following hospitalization applies if the employee was hospitalized for up to one year after discharge from military service.
- 12.8** An employee who qualifies for re-employment rights will be restored with no loss of seniority. The seniority will include pre-military service, employment seniority, a reasonable period of time following departure from employment prior to entering military service, the period of military service and the period between the employee's release from military service and their return to work.
- 12.9** In the event an employee, upon the resumption of his or her position is found not to be able to perform the essential functions of his or her position with a reasonable accommodation, the employee will be eligible for the appropriate severance pay as described in Section 7.
- 12.10** In the event an employee is physically or mentally disabled as a result of such service, and as documented by a medical physician, is unable to return to work within the timeframe established in Section 12.7, the application for re-employment shall be deemed to have been made and severance shall be paid as of the date of the employee's termination of service as described in Section 7.
- 12.11** An employee promoted to take the place of one entering such service, upon the re-employment of such employee, shall be returned to his/her previous position and salary, but at not less than the salary he/she made before the promotion, or not less than the previous classification's minimum salary, whichever is greater.
- 12.12** An employee hired as a replacement for one entering such service shall be covered by all provisions of this Agreement except by this military service clause. Such replacement employee, however, on entering such service shall receive severance pay in accordance with Section 7 and pro-rated vacation pay.
- 12.13** Upon return of an employee from military service, the temporary employee displaced by the return shall be given first consideration when a vacancy occurs.
- 12.14** If an employee is released or discharged due to his or her race, color, national origin, ancestry, sex, marital or parental status, sexual preference, age, mental or physical disability, medical condition, religious creed, or for refusal to perform an illegal act, the employee will be deemed to have satisfactorily completed his or her military service.
- 12.15** Employees on military leave upon resumption of employment shall resume his/her position or a comparable one without diminution of salary immediately upon their timely request for re-employment as described in Section 12.7 and shall return with severance pay eligibility and other rights under this Agreement unimpaired.
- 12.16** Upon an employee's entering such service as set forth during the lifetime of this Agreement, his/her rights under this section shall become vested in the employee and shall survive the expiration of the Agreement.

## **SECTION 13 SECURITY**

- 13.1** There shall be no dismissals, except for just cause or to reduce the force. The term "reduce the force," as used herein, shall be construed as synonymous with layoff for economy.
- 13.2** A newly hired employee shall be subject to a probationary period of six (6) months from the date of employment. During this period of time the employee may be dismissed with or without cause. Any such dismissal shall not be subject to the provisions of Section 9 of this Agreement. The requirements of Section 13.5 and 13.8 of this Agreement shall not apply to the dismissal of an employee during his or her probationary period.
- 13.3** When a vacancy caused by layoff to reduce the force is filled within one year after said layoff, said laid off employee shall be given preference for the position, provided said employee is an applicant for the position and it is the same work he or she was doing before being laid off or is other general work in the department in which the employee was employed.
- 13.4 (a)** Layoffs to reduce the workforce may be made as the needs of the Publisher require. The Publisher shall decide how many employees shall be laid off. Employees who are laid off to reduce the workforce will generally be those with the least amount of seniority. However, the Publisher need not follow a strict application of seniority if its needs and requirements dictate otherwise. In such case, the Publisher will also consider such factors as experience, proficiencies, productivity, affirmative action goals, specialized skills and qualifications.
- (b)** Employees laid off because of a reduction in force shall be afforded all rights accruing to them under the COBRA statute and its implementing regulations. It is understood that health care insurance coverage for employees laid off will continue through the end of the calendar month in which the layoff occurs.
- (c)** Seniority means length of continuous employment.
- 13.5** Upon dismissal an employee upon request shall receive a written notice from the Publisher or its designee stating the cause of his dismissal, provided such demand is made within 72 hours after the employee is informed of the discharge, and the Publisher or its designee shall furnish a copy of such notice to the chairman of The Modesto Bee unit of the Pacific Media Workers Guild TNG-CWA. In the event of an economic layoff, the Publisher shall give four (4) weeks written notice to the employee and the Guild.
- 13.6** In the event of the introduction of new equipment or technological change of such type as to require substantial retraining or to reduce employment opportunities, the Publisher agrees to give the Guild 120 days advance notice thereof in writing. The Publisher

endorses the policy of aiding in the training of employees displaced by the introduction of new equipment or technological change to the extent practical as determined by management to minimize reduced employment opportunities consistent with the efficient operation of the department affected. When such new equipment or technological change results in the creation of any new job classification, the provisions of Section 3.5 shall apply. Nothing in this Section shall restrict or impair the right of the Publisher to install and operate such new equipment or make such technological change.

- 13.7** The Company shall give the Guild notice of all discharges as soon as possible under the circumstances.
- 13.8** An employee discharged for incompetence shall receive two (2) weeks' notice or two (2) weeks' pay in lieu thereof. On discharges for any other just cause except incompetence, employees will receive notice pay only at the option of the Company.

## **SECTION 14 LEAVES OF ABSENCE**

- 14.1** Upon request, the Publisher may, at its discretion, grant an employee unpaid leave of absence including paternity leave. Such leaves shall include maternity leave for a period not to exceed one (1) year and shall not constitute a break in continuity of service in the computation of severance pay, sick leave and other benefits of this Agreement. Vacation pay shall be proportionate to the time actually worked. Any accrued but unused vacation in excess of one week must be taken and paid on an unpaid leave of absence.
- 14.2 (a)** After each five (5) years service completed by an employee, said employee may take an unpaid sabbatical leave of absence of up to one (1) year duration. Said leave shall not constitute a break in service with the Publisher, provided, however, that said leave shall be without pay and without accumulation of any credits or benefits under this Agreement. The number of employees to be on such leave at any one time shall be subject to the reasonable requirements of the Publisher with respect to the efficiency and orderly operation of the department affected, provided that the granting of an employee's leave hereunder may not be deferred for a period of more than twelve (12) months. Upon the employee's return he or she shall be restored to his or her former position and salary but not at less than the then current minimum for said position. An employee temporarily promoted or receiving a salary increase over the minimum herein provided for his or her regular classification or salary for filling the vacancy created during said absent employee's leave, may be returned to his or her previous position and salary, but at not less than the then current minimum for said position. Any accrued but unused vacation in excess of one week must be taken and paid on an unpaid leave of absence.
- (b)** Employees on sabbatical leave shall not accept employment for compensation in The Modesto Bee circulation area with any of the competing news media or services or with a public relations office of a business or government agency having a regular and direct relationship with The Modesto Bee. Nothing in the foregoing shall be interpreted as prohibiting employment in the nature of political activity as provided in state law.
- (c)** Employees on sabbatical leave shall give notification with regard to their intent to return no later than thirty (30) days prior to the expiration of the leave. The decision of that time shall be binding on the employee. Failure to give such notice of intent shall, at the Publisher's option, constitute a resignation. The Publisher will notify the employee in writing of the requirements of this Section when a leave is approved.
- (d)** An employee who takes a sabbatical leave for the purpose of changing jobs permanently is not eligible for such leave.
- 14.3** In the event an employee is elected or appointed to any office of the Pacific Media Workers Guild TNG-CWA or office of a local of the Pacific Media Workers Guild TNG-

CWA or any AFL-CIO office, such employee upon request shall be given a leave of absence, without pay, for his/her term of such office. The provision of this Section shall apply to delegates selected to TNG/CWA or AFL-CIO conventions, national or district. The number of members of the staff who may receive leaves of absence for union conventions at one time shall be no more than one (1) unless a greater number is mutually agreed upon.

**14.4** Bereavement Leave: Paid leave shall be granted on request for consecutive days off necessary to make arrangements for and to attend a family funeral or other observance.

(a) Upon completion of first day of employment, employees are eligible to request payment for bereavement leave.

(b) Bereavement leave payment is equal to an employee's scheduled work day hours.

(c) Eligible employees may request bereavement leave with pay in the event of a death of an immediate family member. Up to three days leave for funerals or other observances within the state and up to five days leave for funerals or other observances out-of-state shall be granted. Immediate family is defined as mother, father, step-parent, husband, wife, domestic partner (as defined in Publisher's policy), son, daughter, step-child, brother, step-brother, sister, step-sister, grandparent, grandchild, mother-in-law, father-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, aunt, uncle, niece, nephew or great-grandparent.

**14.5** Conflicts between this Agreement and federal or state law regulations i.e., 1993 Family Leave Act, will be resolved in compliance with statutory requirements.

## **SECTION 15 MANAGEMENT RIGHTS**

- 15.1** The Publisher has the sole and exclusive right to exercise all the authority, rights and functions of management to assign work, enforce rules of conduct, discipline employees, and to manage, plan, direct and control the operations and the workforce. All of the rights, powers or authority vested in the Publisher, except those specifically abridged, delegated, deleted or modified by the express terms of the Agreement, are retained by the Publisher.

## **SECTION 16 NON-DISCRIMINATION**

- 16.1** The Publisher shall hire and promote and the Guild shall admit to membership without regard to race, color, national origin, ancestry, sex, marital or parental status, sexual preference, age, mental or physical disability, medical condition, religious creed or political belief.
  
- 16.2** There shall be no discrimination against any employee because of membership or activity in the Guild.

## **SECTION 17 JURY DUTY**

- 17.1** Employees called to serve on a coroner's inquest or trial jury and required to appear for jury service on a day or days they are scheduled to work will be paid their regular hourly rate for those hours during which their presence is required by the court up to the number of hours they are scheduled to work that day or seven and one-half (7-1/2) hours, whichever is less.
- 17.2** To receive compensation for jury service, eligible employees must:
- (a)** Provide their supervisors with reasonable notice of the date and time they are required to appear, and;
  - (b)** Upon completion of jury service or at the end of each payroll period, whichever occurs first, submit to their supervisors proof of jury service.
- 17.3** Employees whose presence for jury service on any day is required for fewer hours than they are scheduled to work that day must either:
- (a)** Report to work immediately upon completion of that day's jury service if their scheduled shift has started and work for the balance of their regular scheduled hours, or;
  - (b)** Employees on jury duty during the day and scheduled for night work must report to work at their regularly scheduled time and shall be required to work for the difference between their jury service time and their regularly scheduled hours.
  - (c)** An employee released from jury service with less than one hour remaining on his or her regularly scheduled shift shall not be required to report to work.

## **SECTION 18 HAZARDOUS ASSIGNMENT**

- 18.1** An employee carrying out authorized work involving hazardous conditions shall be reimbursed by the Company for loss of or damage to his or her personal property, including his or her automobile, authorized for use on such assignments when such loss or damage is directly related to the hazardous condition.
  
- 18.2** An employee carrying out authorized work involving hazardous conditions or air travel (where the employee is not the pilot) will be covered by \$150,000 death and dismemberment insurance. Hazardous duty insurance shall be in addition to disability, life and other insurance benefits already provided by the Publisher and/or state and federal law. No employee will be required to fly, assuming notice of such refusal is given within a reasonable period of time after being given the assignment.
  
- 18.3** The parties agree that “unreasonable duties” as set forth in Section 20.7 includes assignments that would subject an employee to imminent danger of bodily harm.

## **SECTION 19 SICK LEAVE**

- 19.1 ELIGIBILITY:** Regular full-time employees shall begin accruing in accordance with this Section, sick leave benefits on their first day of employment and may use it as it is accrued.
- 19.2 OCCASIONAL SICK DAYS:** Eligible employees shall be paid for up to ten (10) scheduled work days per calendar year for which they do not report to work as a consequence of illness or injury or sick dependent and with prior supervisor approval for family emergency.
- (a) To receive compensation for occasional sick days, employees must notify their supervisor before the start of the shift for which they will not report that they will not be able to report to work and must submit a completed Absence Form.
- (b) On January 1 immediately following completion of 12 consecutive months of service and each January 1 thereafter, eligible full-time employees shall have 10 occasional sick days; eligible part-time employee shall have a pro rata number of sick days based on the number of hours worked during the preceding calendar year.
- (c) Eligible employees who have not completed 12 consecutive months of service shall accrue up to 10 occasional sick days on a pro rata basis.
- 19.3 SHORT-TERM DISABILITY:** Eligible employees who qualify for State Disability Insurance (SDI) shall be paid the difference between SDI and sixty (60) percent of their base salary for the term of the qualifying illness or injury or 180 days, whichever is less.
- (a) Available occasional sick days will be integrated with SDI or WC to pay up to the employee's full salary until occasional sick days are exhausted, unless the employee notifies the Publisher's Human Resources Department in advance of payment that occasional sick days should not be integrated.
- 19.4 LONG-TERM DISABILITY:** Eligible employees whose qualifying illness or injury exceeds 180 days are eligible to apply for Long-Term disability benefits through the Publisher's insurance carrier. Eligibility for long-term disability benefits and the maximum benefit period are determined by the insurance carrier. Long-term disability benefits are integrated with other disability payments including State Disability, Workers' Compensation and Social Security to provide fifty (50) percent of an employee's base pay.
- (a) Eligible employees may elect to purchase additional long-term disability coverage under the Publisher's policy to bring total compensation to sixty (60) percent of base salary.

**19.5** An employee who is hospitalized or who is sick or injured for more than seven (7) consecutive calendar days must file a claim for State Disability Insurance.

## **SECTION 20 MISCELLANEOUS**

- 20.1** An employee's byline or credit line shall not be used over his or her advance protest, provided that requests for deletion of bylines are for professional reasons only.
- 20.2** The Publisher agrees to provide a bulletin board in the departments represented by the Guild for official business of the Guild.
- 20.3** Reporters and desk personnel may be assigned as photographers (this includes the use of any equipment able to capture images) and photographers may be assigned as reporters. For all reporters and desk personnel employed on the signing date of this Agreement, their competence shall not be judged on the basis of their work with a camera or other video equipment. For all photographers employed on the signing date of this Agreement, their competence shall not be judged on the basis of their reporting work. For any employee hired after the signing date of this Agreement, the Publisher shall have the right to assign that employee reporter and photographer duties and to evaluate that employee on the basis of his/her performance of those duties.
- 20.4** The Publisher may prescribe rules, not in conflict with the provisions of this Agreement, affecting the conduct and work of its employees as the Publisher may deem it to be necessary or desirable in the regulation and operation of its business. Such rules shall be posted conspicuously in the department represented by the Guild.
- 20.5** The Company is the sole judge of the competency and number of employees required. Notwithstanding the provisions of Section 1.1, the Company may do the following:
- (a)** The Company may for reasons of efficiency and economy utilize employees of other entities owned by McClatchy to perform work which is covered by Section 1.1 of the Agreement.
  - (b)** The Company may utilize non-bargaining unit employees, stringers, and/or freelancers to perform work which is covered by Section 1.1 of this Agreement, provided no full-time or regular part-time employee employed on the signing date of this Agreement is laid off primarily as a result of such utilization.
  - (c)** The Company may assign bargaining unit employees to produce work product for any other McClatchy entity, including its online operation.
  - (d)** Nothing in this Section 20 shall change the jurisdiction and description of the bargaining unit for collective bargaining purposes.
- 20.6** With reasonable notice and at reasonable intervals, an employee may review the material in his or her personnel file relating to work performance by contacting the Human Resources Department for an appointment.

- 20.7** There shall be no imposition of unreasonable duties or unreasonable volume of work on employees covered by this Agreement. It is mutually agreed that the Publisher is entitled to reasonable productivity for the full unit of hours as prescribed in the Agreement constituting a day's or night's shift or week's work.
- 20.8** The parties agree to The Modesto Bee Drug, Alcohol and Substance Policy which is attached hereto and incorporated herein as Attachment B. The Publisher may, without bargaining with the Guild, modify this Policy provided that any such modification is equally applicable to the non-bargaining unit employees who are covered by the Policy.

## **SECTION 21 RETIREMENT**

- 21.1** The following programs are provided for the participation of employees covered by this Agreement in accordance with the eligibility rules of each program:
- (a)** Restated Retirement Plan for Employees of McClatchy Newspapers.
  - (b)** The Voluntary Investment Account (formerly administered as part of the Restated Retirement Plan and now administered under the 401(k) program).
  - (c)** The Money Shelter Plan [401(k)].
- 21.2** Eligible bargaining unit employees are entitled to participate in the programs listed in 21.1 above on the same terms and conditions as these programs are available to other eligible employees of The Modesto Bee. The Publisher has the sole and exclusive discretionary right to at any time change, modify or eliminate any or all of the programs; and/or offer new or replacement programs; and/or transfer participants to new programs. If a program is eliminated, employees will retain all vested and/or accrued benefits. The Publisher shall notify the Guild in writing of any proposed change, modification and/or elimination at least sixty (60) days before the effective date of such change, modification and/or elimination.

## **SECTION 22 BENEFITS**

- 22.1** The Company may change and/or eliminate any health and welfare plans and/or benefits, and the terms and conditions of those plans and/or benefits, applicable to bargaining unit employees without bargaining with the Guild, as long as any such changes are equally applicable to non-union employees.
- 22.2** The cost of providing such insurance shall be borne by the Publisher and the individual employee.
- (a)** The Company shall contribute each month toward the premium cost of each total insurance package on behalf of the bargaining unit employees the same amount which the Publisher contributes each month toward the premium cost of each total insurance package on behalf of non-union employees. The Company may change the amount of its premium contribution on behalf of the bargaining unit employees without bargaining with the Guild, so long as any such changes are equally applicable to non-union employees. The Company's contributions shall at all times be expressed in dollar amounts and not in percentages.
- (b)** The Company may change and/or eliminate the dental and vision only insurance plans and/or benefits, and the terms and conditions of those plans and/or benefits applicable to bargaining unit employees without bargaining with the Guild, as long as any such changes are equally applicable to non-union employees. The Company shall contribute each month toward the premium cost of each dental and vision only insurance package on behalf of the bargaining unit employees the same amount which the Publisher contributes each month toward the premium cost of each dental and vision only insurance package on behalf of non-union employees. The Company may change the amount of its premium contribution on behalf of the bargaining unit employees without bargaining with the Guild, so long as any such changes are equally applicable to non-union employees. The Publisher's contributions shall at all times be expressed in dollar amounts and not in percentages.
- (c)** The employee shall pay each month the difference between the cost of the insurance package under which the employee is covered and the amount which the Publisher contributes as set forth above.
- 22.3 LIFE INSURANCE**
- (a)** The Publisher shall provide the current Group Life Insurance through **Aetna**. The Publisher shall pay the premium for this Life Insurance.
- (b)** An employee may opt for the current Voluntary Term Life through **Aetna**. The employee shall pay the premium for this life insurance.

(c) The Publisher retains the right to change providers listed above, as long as the benefits are substantially equivalent or greater than those currently available through the provider being changed.

## **22.4 SPOUSAL/DOMESTIC PARTNER COVERAGE**

(a) The spouse/domestic partner of an employee may receive primary coverage under The Modesto Bee's health insurance plan under the following circumstances:

1. The employee of the spouse/domestic partner must be eligible for and must elect spousal/domestic partner coverage, and

2. The spouse/domestic partner must be non-working or not be eligible for health insurance coverage through the spouse/domestic partner's employer, or the health insurance coverage provided by the spouse/domestic partner's employer requires the spouse/domestic partner to pay 100% of the coverage cost.

(b) An eligible employee's working spouse/domestic partner with HMO coverage from the working spouse/domestic partner's employer is not eligible for coverage under The Modesto Bee's health insurance plan.

(c) Under the following circumstances, the working spouse/domestic partner of an employee shall be eligible only for secondary coverage under The Modesto Bee's health insurance plan:

1. The employee has selected coverage including spousal/domestic partner coverage under The Modesto Bee's Aetna Choice Plan, and

2. The working spouse/domestic partner is eligible for and elects coverage under his or her employer provided non-HMO plan. For the purposes of this Section 22.4(c), an employer provided non-HMO plan does not include a plan in which the working spouse/domestic partner must pay 100% of the plan's cost.

(d) Eligibility for spousal coverage will be determined as of January 1 of each plan year in accordance with company policy. Eligibility for domestic partner coverage will be determined as of January 1 of each plan year in accordance with the attached Modesto Bee domestic partner policy.

(e) If any working spouse/domestic partner loses coverage under his/her employer provided plan, that spouse/domestic partner will, if required within 30 days of his or her employer's coverage end date, be eligible for primary coverage under The Modesto Bee's health insurance provided the conditions of section 22.4(a) are met.

**22.5 (a)** Full-time employees will be eligible for coverage pursuant to this Section 22 the first of the month, following 30 days of employment.

**(b)** Part-time employees covered by The Modesto Bee's full-time health insurance plan, as described in Section 22.1, who were covered prior to April 1, 1999, shall be grandfathered with that benefit and eligible for coverage as long as they fulfill the requirements set forth in the prior agreement.

**(c)** On-call and part-time employees not covered by (b) above shall be eligible for coverage under The Modesto Bee's Part-Time medical plan, provided that they work an average of at least 20 hours per week a year.

**22.6** The Company may change or eliminate the medical insurance plan and/or its terms and conditions applicable to employees covered by (c) above. The Company shall contribute each month toward the premium cost of the part-time insurance package on behalf of the part-time bargaining unit employees the same amount which the Publisher contributes each month toward the premium cost of the total insurance package on behalf of non-union part-time employees. The Company may change the amount of its premium contribution on behalf of such part-time bargaining unit employees without bargaining with the Guild so long as any such changes are equally applicable to such non-union part-time employees. The Company's contributions shall at all times be expressed in dollar amounts and not in percentages.

**22.7** The cost of providing the insurance set forth in (c) above shall be borne by the Company and the individual employee. The employee shall pay each month the difference between the cost of the insurance package under which the employee is covered and the amount which, the Company contributes as set forth above. The employee's service credit shall be determined as of October 1 of each plan year.

## **SECTION 23**

### **NO STRIKE/LOCKOUT**

- 23.1** During the term of this Agreement the Guild and its agents will not cause, permit, condone, encourage or sanction and no employee or employees of the Publisher will participate or engage in any strike, sympathy strike, slowdown, sick-in, cessation of work, withholding services, work stoppages, picketing, interference with operations of the Publisher or sale or distribution of its products directed against the Publisher at any location. Any employee or employees covered by this Agreement engaging in any such activity shall be subject to immediate discharge as said misconduct shall constitute just cause for discharge under this Agreement. In the event of a strike by another bargaining unit against the Publisher, the Guild shall not encourage the honoring of the other union's picket line, and shall advise its members in writing that honoring such picket lines may lead to permanent replacement.
- 23.2** During the term of this Agreement the Publisher agrees it will not engage in any lockout of its employees covered by the Agreement.
- 23.3** A violation of this Section, or a discharge under 23.1 above shall be subject to arbitration provided for in Section 9, provided the authority of the arbitrator for a grievance under this Section 9 is limited to deciding whether the alleged violation of the no-strike provision occurred, and whether a particular employee or employees participated in the violation of the no-strike clause, whether the Guild and which, if any, of its agents participated in the violation of the no-strike clause, and to order any violation to cease and enjoin any further violation, as well as award proper compensation to the aggrieved party.
- 23.4** The only burden of proof under this Section is the "preponderance of the evidence."

## **SECTION 24 DURATION AND RENEWAL**

- 24.1** This Agreement shall commence on the signing date and expires at midnight on December 31, 2014 and shall inure to the benefit and be binding upon successors and assigns of the Publisher.
- 24.2 (a)** At any time within sixty (60) days immediately prior to the termination of the Agreement, the Publisher or the Guild may initiate negotiations for a new Agreement, to take effect at the expiration of the present Agreement, by submitting a written proposal. The respondent party shall have thirty (30) days in which to submit a counter proposal. If the counterproposal is not submitted within thirty (30) days, the respondent party agrees the current Agreement shall be its counterproposal. The terms and conditions of this Agreement shall remain in effect during such negotiations.
- (b)** Notwithstanding paragraph 24.1, there shall be the following reopeners. Either or both parties may reopen negotiations in 2012 or 2013 on two Sections per year of its choosing. If a party wishes to exercise this option, it must notify the other party of the items on which it is reopening no later than November 1, 2012 and/or November 1, 2013. After a reopening request(s), negotiations shall commence within a reasonable period of time, but in no event shall negotiations commence sooner than October 1, 2012 or October 1, 2013.
- 24.3** The Company and/or the Guild shall have the right to reopen bargaining on any issues related to the consolidation of the editorial production function from other newspaper(s) into the Sacramento Bee provided that the party seeking to reopen shall give the other party at least thirty (30) calendar days notice of its desire to reopen. The clause expires as of November 1, 2014.

## **SECTION 25**

### **COMPLETE AGREEMENT**

- 25.1** This Agreement concludes all collective bargaining between the parties hereto during the term hereof and constitutes the sole, entire and existing agreement between the parties hereto, and supersedes all prior agreements between the Publisher and the Guild and expresses all obligations and restrictions imposed on each of the respective parties during its term.
- 25.2** The Publisher and the Guild, for the life of this Agreement, agree that the other shall not be obligated to bargain collectively with respect to any matter not specifically covered by the express terms of this Agreement. With respect to the negotiations leading to the execution of this Agreement, the fact that a proposal was made and withdrawn during the course of those negotiations shall not be used to prove that the party making the proposal had in any manner given up any rights granted to him elsewhere in this Agreement.

**SECTION 26**  
**SAVINGS CLAUSE**

**26.1** Should any valid federal or state law or final determination of any administrative agency or court of competent jurisdiction require a change in any provision of this Agreement, the provision or provisions so affected shall be automatically conformed to the law or determination and otherwise this Agreement shall continue in full force and effect.

Dated: \_\_\_\_\_

The McClatchy Company,  
Publisher of The Modesto Bee  
(Company)

By: \_\_\_\_\_

Eric Johnston  
Publisher & President

Dated: \_\_\_\_\_

Pacific Media Workers Guild TNG-CWA,  
Local 39521  
(Guild)

By: \_\_\_\_\_

Carl Hall  
Executive Officer

## **SIDE LETTERS**

The parties agree that the following side letters are part of this Agreement.

### **1. COLUMNIST**

It is agreed that full-time columnists (Classification #7) shall be exempt from all provisions of Section 6, except Section 6.12 (Holidays). Full-time columnists are defined as only those individuals who generally work 37.5 hours per week and whose primary function is writing newspaper columns.

However, should a full-time columnist be assigned to perform the duties of a reporter/copy editor (Classification #1) they shall be eligible for 6.4 (Overtime), 6.5 (Call Back Pay), 6.8 (12 Hour Limitation) and 4.4 (Night Differential).

### **2. EMPLOYEE LETTER PURSUANT TO SECTION 1.4**

The agreement between McClatchy Newspapers, publisher of The Modesto Bee and the Pacific Media Workers Guild, TWG- CWA, Local 39521, includes a provision that states that all employees covered by the Agreement shall have the right to belong or not belong to the Guild. However, if you are a Guild member or decide to become a Guild member, you shall remain a member for the term of the Agreement, unless you withdraw from membership during the first 30 days of the Agreement, or unless you withdraw as provided in the next paragraph.

If you are a member of the Guild and do not withdraw from membership during the first 30 days of the Agreement, you will have additional opportunities to withdraw from membership during each annual monthly window period each year thereafter.

You shall receive this notice of your right to withdraw from the Guild without penalty or recourse and your right to cease paying future dues or fees once you have withdrawn, during each annual window period.

All resignations from the Guild must be submitted to the Guild in writing. You may also provide a copy of your Guild resignation to the Publisher.

## **LETTER OF UNDERSTANDING I**

Sharonjeet Ghag, Susan Nowicki, and Joanne Sbranti-Estrada shall receive sick leave benefits under this Section provided they are regularly scheduled to work twenty (20) or more hours per week.

## **LETTER OF UNDERSTANDING II**

The Company at its discretion shall have the right to implement for bargaining unit employees up to one week of unpaid furlough in 2012, up to one week of unpaid furlough in 2013, and up to one week of unpaid furlough in 2014 so long as any such unpaid furloughs are implemented for non-bargaining unit employees (excepting the employees for whom the Company decides that unpaid furloughs are not feasible). In addition, the Company, at its discretion, shall have the right to implement for bargaining unit employees a second week of unpaid furlough in either 2012, 2013, or 2014 so long as that one week of unpaid furlough is implemented for non-bargaining unit employees (excepting those employees for whom the Company decides that unpaid furloughs are not feasible). The implementation of unpaid furloughs shall be under the same terms and conditions as unpaid furloughs are implemented for non-exempt non-bargaining unit employees. The Company shall give the Guild at least thirty (30) calendar days advance notice of the implementation of any unpaid furloughs. If the Company notifies the Guild of its intent to implement for certain non-represented employees an alternate cost reduction in lieu of an unpaid furlough, the Guild may turn down the alternate cost reduction measure. However, if the Guild turns down the alternate cost reduction measure, the Company, may, at its discretion, implement the unpaid furlough program for employees while implementing the alternative cost reduction for applicable non-represented employees.

# ATTACHMENT A

## THE MODESTO BEE CLAIM FOR REIMBURSEMENT PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE PREMIUM

**NOTE:** THIS CLAIM MUST BE ACCOMPANIED BY A COPY OF THE AUTOMOBILE POLICY DECLARATIONS WITH ITEMIZED COSTS FOR EACH TYPE OF COVERAGE.

**Employee Name:** \_\_\_\_\_ **Employee ID:** \_\_\_\_\_

**Position:** \_\_\_\_\_ **Department:** \_\_\_\_\_

Insurance Company: \_\_\_\_\_ Policy Number: \_\_\_\_\_

Insurance Term: From \_\_\_\_\_ To \_\_\_\_\_ VIN # \_\_\_\_\_

Car Make & Model \_\_\_\_\_ Year \_\_\_\_\_

A. Bodily Injury Premium (Minimum \$50,000/\$100,000)  
(Maximum \$200,000/\$500,000) \$ \_\_\_\_\_

B. Property Damage Premium (Minimum \$50,000)  
(Maximum \$100,000) \$ \_\_\_\_\_

**Total A & B (Do not include any other costs)** \$ \_\_\_\_\_

**AMOUNT TO BE REIMBURSED (50% of the total)** \$ \_\_\_\_\_

### TO BE COMPLETED BY AGENT:

Do the above rates include any additional costs for citations, accidents, teenage drivers, etc?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If so, the base P/L and P/D premium without reference to such additional cost is: \$ \_\_\_\_\_

Signature of Agent: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Date Prepared: \_\_\_\_\_

### TO BE COMPLETED BY EMPLOYEE:

I, the undersigned employee, understand and agree that if my employment is terminated for any reason prior to the expiration of the above policy term for which the company has paid one-half of the premium, the unused portion of the premium paid by the company may be withheld from my final check.

Signature of Employee: \_\_\_\_\_ Date: \_\_\_\_\_

### FOR USE BY THE HUMAN RESOURCES DEPARTMENT

Processed By: \_\_\_\_\_ Date: \_\_\_\_\_

Payable To: \_\_\_\_\_ Amount to Pay: \$ \_\_\_\_\_

Charge Department No: \_\_\_\_\_ Account No: \_\_\_\_\_

Human Resources Approval: \_\_\_\_\_ Date: \_\_\_\_\_

# ATTACHMENT B

## ALCOHOL, DRUG & SUBSTANCE POLICY

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*The Modesto Bee* is committed to maintaining a safe and efficient workplace free of drugs and alcohol and to discouraging drug, alcohol and substance abuse by its employees. Employees who are under the influence of drugs, alcohol or other substances on the job compromise the Newspaper's interests and may endanger their own health and safety and the health and safety of others.

*The Modesto Bee's* goals are to avoid accidents, promote and maintain safe and efficient working conditions for its employees, and to protect the Newspaper's business, property, equipment and operations. To support these goals, the Newspaper has established this policy concerning the use of drugs, alcohol and other substances. As a condition of continued employment with the Newspaper, you must abide by this policy.

### 1. Definitions

For the purpose of this policy:

- "Illegal drugs or other controlled substances" means any drug or substance that (1) is not legally obtainable; (2) is legally obtainable but has not been legally obtained; or (3) has been legally obtained but is being sold or distributed unlawfully.
- "Legal drug" means any drug, including any prescription drug or over-the-counter drug, that has been legally obtained and that is not unlawfully sold or distributed.
- "Abuse of any legal drug" means the use of any legal drug (1) for any purpose other than the purpose for which it was prescribed or manufactured; or (2) in a quantity, frequency or manner that is contrary to the instructions or recommendations of the prescribing physician or manufacturer.
- "Substance" includes but is not limited to any inhalants, adhesives, glues, paints or other substances used for the purpose of intoxication.
- "Possession" means that an employee has the substance on his or her person or otherwise under his or her control.
- "Drug and alcohol testing" means testing for drugs, whether illegal or legal, and/or alcohol as defined within the policy.

### 2. Prohibited Conduct

This policy applies to employees whenever the interests of *The Modesto Bee* or its employees may be adversely affected, including any time the employee is:

- On the premises of the Newspaper;
- Conducting or performing Newspaper business, regardless of location;
- Operating or responsible for the operation, custody or care of Newspaper equipment or property;
- Driving a Newspaper-owned, leased or rented vehicle or any other vehicle on behalf of the Newspaper, including a personal vehicle;
- Responsible for the safety of others; or
- Off-duty but using drugs, alcohol or other substances in a manner that in any way adversely affects the Newspaper or the employee's ability to perform his or her job.

Prohibited use of drugs, alcohol and other substances is described below:

***Alcohol***

The unauthorized use, possession, purchase, sale, manufacture, distribution, transportation or dispensation (or attempts thereof) of alcohol or being under the influence of alcohol is strictly prohibited and subject to disciplinary action up to and including termination.

The only exception to this policy is for moderate consumption in connection with Newspaper authorized events at which consumption of alcohol has specifically been approved or in places of public accommodation in connection with typical business affairs or functions. Even in such circumstances, however, excessive use, intoxication or other abuse of alcoholic beverages is prohibited.

***Illegal Drugs***

The use, possession, purchase, sale, manufacture, distribution, transportation or dispensation (or attempts thereof) of any illegal drug or other controlled substance, or being under the influence of any illegal drug or other controlled substance is strictly prohibited and subject to disciplinary action up to and including termination.

***Legal Drugs***

The abuse of any legal drug, or the purchase, sale, manufacture, distribution, transportation or dispensation (or attempts thereof) of any legal prescription or drug in a manner inconsistent with law is strictly prohibited and subject to disciplinary action up to and including termination.

Working while impaired by the use of any legal drug, including marijuana or other controlled substance used as part of a prescribed treatment program is a violation of this policy when such use might (a) endanger the safety of the employee or others, (b) pose a risk of damage to Newspaper property or equipment, or (c) substantially interfere with job performance or the efficient operation of the Newspaper.

Employees under the influence of legal drugs that may cause such impairment must notify human resources. This information will be treated confidentially. If it is determined that the employee cannot safely perform his or her duties while under the influence of the legal drug, he or she will not be permitted to return to work. The employee may use available sick leave and/or vacation time during his or her absence. The employee also may request unpaid time off during this period. Nothing in this policy is intended to diminish the Newspaper's commitment to employ and reasonably accommodate qualified, disabled individuals.

***Substances***

The abuse of any substance, or the purchase, sale, manufacture, distribution, transportation or dispensation (or attempts thereof) of any substance in a manner inconsistent with law is strictly prohibited and subject to disciplinary action up to and including termination. This applies to the use of inhalants, adhesives, glues, paints or other substances used for the purpose of intoxication.

**3. Types of Testing**

***Applicant Testing***

As part of *The Modesto Bee's* employment screening process, any applicant, including part-time or

on-call employees, to whom an offer of employment is made must pass a drug test. This policy also applies to previous employees of *The Modesto Bee* or another *McClatchy* newspaper who are rehired and to employees who transfer from one *McClatchy* business to another. The offer of employment (or reemployment) is conditioned on a negative test result. Applicants will be informed of the Newspaper's Drug, Alcohol and Substance policy during the employment application process.

### ***Reasonable Suspicion Testing***

If a supervisor or manager has reasonable suspicion that an employee is working in an impaired condition or otherwise engaging in conduct that violates this policy, the employee will be asked about the observed behavior and offered an opportunity to provide a reasonable explanation. Depending upon the circumstances and/or the employee's explanation, the employee may be required to take a drug and/or alcohol test in accordance with the procedures outlined in this policy.

If the employee refuses to cooperate with the administration of drug and alcohol testing, the refusal will be handled in the same manner as a positive test result.

Examples of reasonable suspicion that will lead to drug and/or alcohol testing include but are not limited to:

- When an employee is involved in a work-related accident.
- When an employee driving a personal or a Newspaper-owned, leased or rented vehicle is involved in any vehicle accident during the course of employment.
- When an employee's actions during the course of employment results in property, material and/or equipment damage.
- When an employee is observed using alcohol or drugs during work hours.
- When there is reasonable suspicion in which a supervisor believes the actions, appearance and/or conduct of an employee's behavior is indicative of drug, alcohol or substance use. This includes but is not limited to suspicion that is based on specific personal observations such as an employee's manner, disposition, muscular movement, appearance, behavior, speech or breath odor; information provided to management by an employee, by law enforcement officials, by a security service or by other persons believed to be reliable; or a suspicion that is based on other surrounding circumstances.

Employees are required to immediately report all incidents, accidents, property damage and/or injuries to a supervisor or human resources. Any employee who fails to do so will be subject to disciplinary action up to and including termination.

Employees who are tested for reasonable suspicion may be suspended with or without pay until the test results have been confirmed or until the investigation is complete.

### ***Random Testing***

Random drug and alcohol testing only will be used when (a) required for certain positions in compliance with applicable laws or regulations, or (b) as part of the terms and conditions of a rehabilitation program or Return to Work Agreement.

## **4. Testing Procedures**

Any employee or applicant subject to testing under this policy will be asked to sign a form acknowledging the procedures governing testing and consenting to collection and release of relevant medical information. Refusal to sign the agreement and consent form or to submit to the drug and/or

alcohol test will result in the revocation of an applicant's job offer, or for employees, such refusal will be handled in the same manner as a positive test result.

Persons being tested will be asked to provide a urine, blood, hair, breath or sweat sample by the collection site person. All testing will be done under reasonable and sanitary conditions. Procedures for urine collection will allow for individual privacy unless there is a justifiable reason to believe the individual may alter or substitute the specimen to be provided. Samples will be tested for temperature and subjected to other validation procedures as are appropriate. The collection site person and the person being tested will maintain chain-of-custody procedures at all times including proper documentation and sample labeling. Chain-of-custody procedures will also be carried out in a manner reasonably calculated to prevent contamination or adulteration of the sample and to ensure confidentiality of all results.

Drug test samples will be sent to an independent National Institute of Drug Abuse (NIDA)-certified medical clinic or laboratory for processing. All test results will then be read and interpreted by an MRO-certified physician.

If a drug test is positive, the results will be confirmed by a gas chromatography/mass spectrometry. The MRO-certified physician will contact the applicant or employee to confirm the test data and discuss variables that may have affected the test. The Newspaper will pay the cost of the first drug test and the confirming gas chromatography/spectrometry. If the applicant or employee disagrees with a confirmed positive result after a discussion with the physician, the applicant or employee may have the same sample sent to any NIDA-certified lab to be tested at his or her own cost. This request must be made in writing within seven days of being advised of a positive test result.

If a breath analysis is positive, the test will be administered up to two more times within consecutive, 15-minute intervals. If an applicant or employee disagrees with the positive test results, the employee may elect to have a blood test conducted at his or her own cost. This test must be conducted immediately after the breath analyzer.

Any attempts to tamper with or adulterate a sample will be grounds for immediate termination.

## **5. Positive Test Standards**

### ***Alcohol***

Employees required to maintain a commercial driver's license will be held to applicable laws or regulations governing alcohol consumption and use. All other employees will be presumed to have a positive test for alcohol and to be "under the influence" when test results meet or exceed a blood alcohol level of 0.08.

### ***Drug***

Employees will be presumed to have a positive test result and to be "under the influence" of a drug and in violation of this policy when the test results meet or exceed the cutoff level established by the U.S. Department of Health and Human Services for the specific drug or substance in question.

## **6. Positive Test Results and Discipline**

### ***Applicants***

If an applicant tests positive, the offer of employment will be revoked. The applicant may not reapply for at least 12 months from the date of the last drug test.

## ***Employees***

If an employee tests positive, he or she may be disciplined up to and including termination. All other violations of this policy will result in disciplinary action up to and including termination.

Any employee who tests positive for the presence of drugs and/or alcohol may be suspended with or without pay pending further review. Employees who test positive for the first time may be referred to the Employee Assistance Program (EAP) or be subject to disciplinary action up to and including termination. If an employee is referred to the EAP, the employee must contact the EAP provider within two working days. An employee who does not contact the EAP within this time period will be terminated.

As a condition of continued employment, an employee referred to the EAP must comply with all recommendations of the EAP provider and must enter into a Return to Work Agreement before returning to work. The employee must meet and comply with all requirements of the Return to Work Agreement. These requirements will include but are not limited to: (a) remaining drug, alcohol and substance abuse free, (b) being randomly tested for drugs and/or alcohol for a period of time as set forth in the Agreement, and (c) continuing to meet all job requirements and standards of his or her position. If the employee does not comply with these and all other requirements of the Return to Work Agreement, he or she will be terminated immediately.

An employee who is referred to the EAP in lieu of termination will receive a final written warning. If the employee tests positive for drugs and/or alcohol a second time, or in any other way violates this policy, he or she will be terminated.

Under the commercial Motor Vehicle Safety Act of 1986, drivers who are convicted of operating a motor vehicle under the influence of alcohol or drugs are disqualified from driving for one year. An employee who cannot perform his or her customary job duties will be terminated.

## **7. Employee Assistance Program and Rehabilitation**

If an employee suspects he or she may have a drug, alcohol or substance abuse problem, he or she is encouraged to seek treatment before becoming involved in an incident that may lead to drug and alcohol testing or disciplinary action. Dependence on drugs, alcohol and/or other substances or participating in a rehabilitation program will not protect an employee from disciplinary action for unacceptable performance, continued substance abuse or from a policy violation that occurred before the employee seeks assistance.

All information regarding referrals, evaluation and treatment of an employee who participates in an assistance program will be maintained in a private and confidential manner.

Employees who wish to voluntarily enter and participate in an approved drug or alcohol rehabilitation program are encouraged to contact human resources.

## **8. Confidentiality**

All drug and alcohol testing records are kept confidential. Access to such information is limited to individuals who have a business need to know.

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