

## DEPARTMENT OF PERSONNEL AND ADMINISTRATION

### State Personnel Board and State Personnel Director

## STATE PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES

### 4 CCR 801-1

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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The purpose of the State Personnel Board Rules and Director's Administrative Procedures is to establish a comprehensive system of rules and procedures for employees within the state personnel system. In order to distinguish the Board from the Director's Procedures, rules promulgated by the State Personnel Board are noted as "Board Rules". Rules adopted by the Board and procedures adopted by the Director require the formal rulemaking process defined in the Administrative Procedures Act.

Pursuant to § 24-50-101(3)(b), C.R.S., it is the duty of the State Personnel Board to provide fair and timely resolution of the cases before it. Pursuant to § 24-50-101(3)(c), C.R.S., it is the duty of the State Personnel Director to establish the general criteria for adherence to the merit principles and for fair treatment of individuals within the state personnel system.

### **Preamble**

Unless otherwise noted in a specific provision, the entire body of State Personnel Board Rules were repealed and new permanent rules were adopted by the State Personnel Board on April 19, 2005, pursuant to a Statement of Basis and Purpose dated April 19, 2005. The entire body of the State Personnel Director's Administrative Procedures were repealed and new permanent procedures were adopted by the State Personnel Director on May 5, 2005, pursuant to a Statement of Basis and Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005.

This version reflects changes to Chapter 6, Performance that became effective on June 15, 2021. These changes clarify and simplify the Board Rules and the Director's Procedures in Chapter 6, Performance. These changes also create the alignment of the Board Rules and Director's Procedures with current law.

## **Chapter 1      Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions**

Authority for rules promulgated in Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions, is found in State of Colorado Constitution Article XII, Sections 13, 14 and 15, State of Colorado Revised Statutes (C.R.S.) §§24-50-103, 24-50-104(8), 24-50-112.5, 24-50-116, 24-50-117, 24-50-124, 24-50-128, 24-50-129, 24-50-130, 24-50-132, 24-50-145, 24-2-103, 24-6-402, 24-31-301-104, 24-30-2103, 24-30-2105, 24-50.3-105, 24-50.3-105, 24-50.5-103, 24-72-201, -204.5, 25-75-112, and 24-18-101 through 205, Title 24 Article 18, Part 1, Code of Ethics, Title 24, Article 50: 24-50-101, 24-50-102, 24-50-103, 24-50-104, 24-50-109.5, 24-50-112.5, 24-50-114, 24-50-116, 24-50-123, 24-50-124, 24-50-125, 24-50-125.3, 24-50-125.4, 24-50-126, 24-50-128, 24-50-129, 24-50-130, 24-50-134, 24-50-135, 24-50-137, 24-50-141, 24-50-203, 24-50-503, 24-50-507. Board rules are identified by cites beginning with "Board Rule." (01/01/2021)

### **General Principle**

Board Rule 1-1. The purpose of the rules promulgated herein by the Colorado State Personnel Board (hereafter "Board") and the Colorado State Personnel Director's (hereafter "Director") administrative procedures is to provide a sound, comprehensive system of human resources management for the employees within the state personnel system. This system recognizes employee rights, values the differing roles and relevant contributions of various stakeholders, allows reasonable discretion for departments to establish their own operating practices, and ensures the Board rules and Director's administrative procedures (hereinafter "rules") complement each other. It is the intent of the Board and the Director to adopt the minimum rules necessary to ensure the least cumbersome process possible for administering the state personnel system while meeting legal requirements.

### **State Personnel Board**

Board Rule 1-2. Certified employees shall be eligible to elect members of the Board in accordance with §24-50-103, C.R.S.

- A. The Board's director shall conduct an election to fill the vacant position of an elected Board member within three (3) months of the date of vacancy.
- B. A certified employee may contest the election of an elected Board member in the manner described at §24-50-103(3)(c)(II), C.R.S., only after:
  1. Giving notice to the Board of the grounds for contest within seven (7) business days after the election has been certified; and
  2. Giving the Board, through its director, at least twenty-one (21) days to cure the allegedly invalid election. (1/01/15)

Board Rule 1-3. The Board's director, or other person with written delegation, is the agent for service of process for any action involving the Board.

Board Rule 1-4. The Board shall meet as often as necessary to conduct its business, or at such other times as may be determined by the Board chairperson or a majority of the Board. Reasonable notice of any regular or special meeting shall be given to the Board members, interested parties, and the public as provided in §24-6-402, C.R.S., or successor statute.

Board Rule 1-5. Unless otherwise ordered, all materials to be considered by the Board at its monthly meeting shall be received in the Board's office at least twelve (12) calendar days before the meeting. The party shall provide the original and nine (9) copies of all materials to be considered by the Board, except as otherwise provided in these rules. (1/1/07).

### **State Personnel Director**

- 1-6. The Director, under a current written delegation, may delegate certain Director's powers to heads of principal departments and presidents of institutions of higher education (hereafter "department"). Such delegated power is discretionary and subject to the Director's review. Law and the Director specify powers that shall not be delegated outside the Department of Personnel.
- 1-7. The Director may delegate any and all powers, duties, and functions to the Division of Human Resources in the Department of Personnel.

### **Appointing Authority**

- 1-8. Executive directors of principal departments and presidents of institutions of higher education (hereafter "department" and "department head") are appointing authorities for their own offices and division directors. Division directors as defined by law are appointing authorities for their respective divisions. An appointing authority may delegate in writing any and all human resource functions, including the approval of further delegation beyond the initial designee. In the area of corrective, disciplinary, or other actions that have an adverse effect on base pay, status, or tenure, each department shall establish a written document specifying the appointing authority for each individual employee and this information shall be made available to the employee.
- 1-9. Appointing authority powers include, but are not limited to: hiring and evaluating performance; determining the amount and type of any non-base incentive within policies issued by the Director and the department's written plan; defining a job; administering corrective/disciplinary action; determining work hours including meal periods and breaks, and safe conditions and tools of employment; identifying positions to be created or abolished; assigning employees to positions; determining work location; and accountability for any other responsibilities in rule. (7/1/07)
- 1-10. Appointing authorities have a duty to ensure employees are oriented to the workplace, including communicating requirements and rights. (04/01/2020)
- 1-11. All appointing authorities, managers, and supervisors are accountable for compliance with these rules and all applicable laws, including implementation of policy directives and executive orders. (04/01/2020)

### **Employee Activities**

Board Rule 1-12. Employees are required to know and adhere to personnel rules, laws, and executive orders governing their employment. Departments are required to make those rules, laws, and executive orders available to employees.

Board Rule 1-13. No employee is allowed to engage in any outside employment or other activity that is directly incompatible with the duties and responsibilities of the employee's state position, including any business transaction, private business relationship, or ownership. The employee is not allowed to accept outside compensation for performance of state duties. This includes acceptance of any fee, compensation, gift, reward, gratuity, expenses, or other thing of monetary value that could result in preferential treatment, impediment of governmental efficiency or economy, loss of complete independence and impartiality, decision making outside official channels, and disclosure or use of confidential information acquired through state employment. Incompatibility includes reasonable inference that the above has occurred, may occur, or has any other adverse effect on the public's confidence in the integrity of state government.

- A. If the employee receives any such form of compensation that cannot be returned, it is to be immediately turned over to the appropriate state official as state property except for the following. The employee may accept awards from non-profit organizations for meritorious public contributions. Honoraria or expenses for papers, demonstrations, and appearances made with approval of the appointing authority may also be kept if the activity occurs during a holiday, leave, a scheduled day off, or outside normal work hours.
- B. An employee shall give advance notice to the appointing authority and take necessary steps to avoid any direct conflict between the employee's state position and outside employment or other activity.

Board Rule 1-14. Employees may engage in outside employment with advance written approval from the appointing authority. The appointing authority shall base approval on whether the outside employment interferes with the performance of the state job or is inconsistent with the interests of the state, including raising criticism or appearance of a conflict.

- A. An employee may be retained by a different department through a personal services contract to perform a different function consistent with the requirements of Chapter 10, Personal Services Agreements.
- B. A personal services contract involving an employee shall not be used to evade overtime.

1-15. Employment with more than one (1) department is commonly referred to as dual employment. An employee may be employed by and receive compensation from more than one (1) department with advance written approval of both appointing authorities. There shall be a written agreement between the appointing authorities that specifies the terms and conditions of the arrangement including any overtime considerations. For further information, refer to Chapter 3, Compensation. (04/01/2020)

Board Rule 1-16. It is the duty of state employees to protect and conserve state property. No employee shall use state time, property, equipment, or supplies for private use or any other purpose not in the interests of the State of Colorado.

Board Rule 1-17. Employees may participate in political activities subject to state and federal laws. No state time or property may be used for this purpose.

Board Rule 1-18. Employees have the right to associate, self-organize, and designate representatives of their choice. Membership in any employee organization or union is not a condition of state employment. No employee may be coerced into joining or not joining and solicitation of members shall not occur during work hours without the approval of the appointing authority. The employee's representative may confer, with prior consent from the supervisor, on employment matters during work hours. Such conferences should be scheduled to minimize disruption to productivity and the general work environment. A supervisor's consent shall not be unreasonably withheld.

Board Rule 1-19. An employee may voluntarily and knowingly waive, in writing, all rights under the state personnel system, except where prohibited by state or federal law.

### **Records**

Board Rule 1-20. The Board and the Director shall maintain records of personnel activities that have legal, administrative, or historical value in accordance with statute. Legal value is defined as a Board appeal record less than twenty (20) years old or the statement of basis and purpose for a rule that is in effect or was in effect during the past five (5) years. Administrative value is defined as a record that is less than five (5) years old and summarizes department cost efficiencies, including staffing and workload statistics. Historical value is defined as a record documenting a major change in the function of the Board or the Department of Personnel.

1-21. Departments shall maintain official records in written or electronic form. Access to records is governed by §24-72-201, C.R.S, et seq. Each department shall have an authorized records custodian who is accountable for the maintenance, access and confidentiality, and disposition of all records required by state and federal law. The Division of Human Resources shall have access to records required for the monitoring of delegated authorities and other official duties.

1-22. When an employee transfers or reinstates to a different department, all official employee records shall be forwarded to the new department within ten (10) business days. Failure to forward these records may result in liability for violation of these rules and any applicable laws. (04/01/2020)

1-23. Official Personnel File. Each employee's official personnel file shall include the following and be retained ten (10) years after separation: a separate record of all employment actions; most current application information; corrective/disciplinary action information unless rescinded by the Board or further appeal or removed by the appointing authority; final annual performance evaluations for at least the past three (3) years; grievance and other dispute information; letters of recommendation, reference, or commendation as requested; and, any other information desired by the appointing authority. An employee shall be given a copy of any information placed in the personnel file, except for reference checks. (7/1/07)

1-24. Medical Records. Any medical information on the employee or a family member shall be maintained in a separate, confidential medical file with limited access in accordance with law.

1-25. Selection Records. Selection records shall be kept for two (2) years after expiration of the eligible list, except when notified of a charge of discrimination. In such a case, the record is maintained until the charge is resolved. The content of selection records shall include all related information up to the establishment of the eligible list. (3/30/13)

### **Human Resource Innovation Programs**

Board Rule 1-26. A written statement of each Human Resource Innovation Program (HRIP) implemented by the agency shall be submitted by the head of the agency to the State Personnel Board or State Personnel Director, as appropriate, at 1525 Sherman Street, Denver, CO, 80203, commensurate with the implementation of each HRIP. The description shall indicate the following:

- A. In developing the HRIP, input was obtained from both management and non-management employees in the department; and,
- B. The HRIP complies with the Colorado Constitution, statutes, and rules.

The Board shall forward HRIPs within the Director's jurisdiction to the Director. After review, the Director will issue a written consultation. The Board will review each HRIP within the Board's jurisdiction at the next regularly scheduled public Board meeting and issue a written consultation.

Each department head is responsible for updating the statement and submitting any modifications or revisions of the HRIP to the Board or Director commensurate with such changes. (1/01/15)

## Definitions

- 1-27. Advisor. Individual who assists a party during a grievance or the performance management dispute resolution process by explaining the process, helping identify the issues, preparing documents, and attending meetings. (7/1/07)
- 1-28. Allocation. Assignment of an individual position to the proper class.
- 1-29. Announcement. The published notice for a position or class that will be filled on the basis of merit and fitness.
- 1-30. Applicant. An individual who applies for employment in the state personnel system.
- 1-31. Applicant Pool. A group of individuals who have applied for employment in the state personnel system.
- 1-32. Base Pay. An employee's salary without premium pay. Synonymous with base salary.
- Board Rule 1-32.1. Certified. The status of an employee who has successfully completed a probationary period or a trial service period. (3/15/11)
- 1-33. Class. A group of positions whose essential character (general nature of the work and responsibilities) warrants the same pay grade, title, and similar qualifications for entry into the class.
- 1-34. Class Conversion. Automatic movement of a current title and grade to a new title and grade.
- 1-35. Class Description. The official written description of a class series and its levels as issued by the Department of Personnel.
- 1-36. Class Placement. Portion of a system maintenance study in which all affected positions are individually placed in the proper new class.
- 1-37. Class Series. A group of classes engaged in the same kind of occupational work but representing different levels.
- 1-37.1 Comparative Analysis. A process that utilizes professionally accepted standards that compares specific job-related knowledge, skills, abilities, behaviors and other competencies. Such a process may be numeric or non-numeric. (3/30/13)
- 1-38. Competencies. Observable, measurable patterns of knowledge, skills and abilities, behaviors, and other characteristics that employees need to successfully perform work-related tasks.
- 1-38.1. Conditional Appointments. A temporary appointment to a permanent position approved by the Appointing Authority. The appointment applies to a current certified employee who is qualified and temporarily promotes into a permanent vacancy for which no eligible list exists. (04/01/2020)

- 1-38.2. Conditions of Employment. Conditions of employment refer to requirements of a position such as passing a criminal background check, meeting travel demands, regularly lifting a specified amount of weight, driving requirements and driver's license requirements. Conditions of employment may be based on job analysis and may be documented in the position description. Note: Conditions of employment apply to a position, whereas minimum qualifications apply to a job class. This definition is not applicable to the Colorado Partnership for Quality Jobs and Services Act, 24-50-Part 11. (01/01/2021)
- 1-38.3. Critical Positions. Positions departments determine as critical to their operations. Employees in critical positions can be FLSA exempt or nonexempt and can be expected to work and/or remain at their worksite in delayed start, early release, or closure situations. (04/01/2020)
- Board Rule 1-39. Day. Calendar day unless otherwise specified.
- Board Rule 1-40. Department. One of the principal departments defined in law and institutions of higher education.
- Board Rule 1-40.1. Departmental Reemployment List. A list which is established on a departmental basis, as listed in Chapter 7, Separation, containing the names of certified employees who meet one (1) of the following conditions: (a) separated from employment due to layoff; (b) voluntarily demoted in lieu of layoff or as a result of a position's reallocation; and/or (c) former position no longer exists upon return from an exempt position accepted at the request of the governor or other elected or appointed official and the employee is laid off. (3/15/11)
- Board Rule 1-41. Disciplinary Suspension. A type of disciplinary action in which an employee is not allowed to work and is not paid for a specified period of time.
- Board Rule 1-42. Dismissal. Disciplinary termination of employment.
- 1-43. Eligible List. A list of persons who have successfully passed through a comparative analysis and may be considered for appointment. Referrals are drawn from this list. (1/1/14)
- Board Rule 1-44. Employee. An individual who occupies a full-time or part-time position in the state personnel system.
- Board Rule 1-45. Employment Lists. Statutory term that includes promotional and open-competitive eligible lists and reemployment lists.
- 1-45.1. Essential Positions. Positions that perform essential law enforcement, highway maintenance, and other support services directly necessary for the health, safety, and welfare of patients, residents, and inmates of state institutions or state facilities. Employees in essential positions can be only FLSA nonexempt and can be required to work unexpected or unusual work hours to perform the essential and/or emergency services of the department without delay and/or without interruption. (04/01/2020)
- 1-46. Examination. A numerical assessment of job-related competencies, knowledge, skills, abilities and job fit to screen applicants for the eligible list. (3/30/13)
- Board Rule 1-47. Exempt Employee. One who is not eligible for overtime.

- 1-47.1. Fair Labor Standards Act (FLSA). The Fair Labor Standards Act (FLSA) includes but is not limited to, the establishment of minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments. Special rules apply to State and local government employment including but not limited to: (a) compensatory time off instead of cash overtime pay, (b) fire protection and law enforcement activities and (c) volunteer services. (04/01/2020)
- 1-48. Full-Time. A position scheduled and budgeted for 2080 hours per fiscal year. (04/01/2020)
- Board Rule 1-49. Good Cause. Any cause not attributable to a party's or counsel's act or omission, including but not limited to: death or incapacitation of a party or the attorney for the party; a court order staying or otherwise necessitating a continuance; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for hearing; or agreement of the parties to a settlement which has been or will likely be approved by the final decision maker.
- A. Good cause will normally not include: unavailability of counsel due to an engagement in another judicial or administrative proceeding, unless such other proceeding was involuntarily set subsequent to the present case; unavailability of a necessary witness if the witness' testimony can be taken by telephone or deposition; or failure of an attorney to timely prepare for the hearing.
- 1-50. Health Care Provider. For purposes of family/medical leave only, a doctor of medicine or osteopathy, dentist, podiatrist, clinical psychologist, optometrist, chiropractor limited to manual manipulation of the spine to correct a subluxation as demonstrated by x-ray, nurse practitioner, physician's assistant, nurse mid-wife, Christian Science practitioner listed with First Church of Christ, Scientist in Boston, and clinical social worker. Health care providers shall be authorized to practice and be performing within the scope of their practice.
- 1-51. Independent Contractor. A firm or individual who is responsible to the state for the results of certain work, but is not subject to the state's control as to the means and methods of accomplishing those results. For purposes of determining independent contractor status, the Director will apply the criteria set forth in the fiscal rules of the state controller, and state and federal law. Independent contractor is synonymous with contractor for purposes of these rules. (5/1/10)
- 1-52. Job Description. The official document summarizing the primary duties and responsibilities assigned to a position by the appointing authority.
- 1-53. Job Evaluation System. System of classes and assigned pay grades developed by the Director. All positions are placed in the system during a system maintenance study or are allocated when an assignment changes or a position is created.
- 1-53.1. Job Qualifications. Includes the minimum qualifications for a vacancy's class; any special qualifications, including but not limited to any required education or experience and any licensure or certification requirements; and/or any pre- or post-employment screening requirements. (3/15/11)
- 1-54. Laid Off. Involuntary non-disciplinary separation from a position in the state personnel system and, if applicable, the offer of retention rights and/or placement on a reemployment list. (3/30/13)
- 1-55. Layoff. Process of involuntarily separating an employee from a position in the state personnel system due to abolishment of the position for lack of work, lack of funds, reorganization, or displacement by another employee exercising retention rights. (3/30/13)

- 1-55.01. Minimum Qualification. The type and level of education, experience, licensure, certification, and/or any applicable substitutions required for entry into a defined state personnel system job class. Minimum Qualifications are established by the Director. (04/01/2020)
- 1-55.02. Nonexempt Employee. Employee in a position that is eligible for overtime under the FLSA. (04/01/2020)
- Board Rule 1-55.1. Non-disciplinary Demotion. An appointment which is a voluntary change to a class with a lower pay range maximum. (3/15/11)
- Board Rule 1-56. Non-Permanent Position. A position established for a nine-month period or less. It may be a full-time or part-time work schedule. Synonymous with temporary. (3/30/13)
- 1-56.1. Open Competitive List. A list containing the names of individuals who have successfully completed any applicable comparative analysis process resulting from a job announcement that was not restricted to current state employees. (3/30/13)
- 1-56.2. Part-Time. A position scheduled for less than 2080 hours per fiscal year. (04/01/2020)
- 1-57. Party or Parties. A person appealing and any person or department against whom an appeal is filed.
- 1-58. Pay Grade. Reflects the minimum and maximum base salary rates for work in a specific class. Individual salaries vary within the ranges depending on individual movements in accordance with these provisions. Synonymous with pay level, range, or band.
- 1-59. Pay Plans. Listing of all pay grades and their corresponding ranges for occupational groups.
- 1-59.1. Pay Plan - Medical. The pay plan that applies to classified positions in specific class series within the Health Care Services Occupational Group. The statutory lid for the class series pay ranges is greater than the general statutory lid. Employees occupying these positions are compensated based solely on performance as established in the required annual contract. (04/01/2020)
- 1-60. Pay Rate. Actual base pay or salary amount.
- Board Rule 1-61. Permanent Position. A position that is carried on the staffing pattern in excess of nine (9) months or on an annual, seasonal basis. It may be a full- or part-time work schedule. (3/30/13)
- Board Rule 1-62. Position. An individual job, as defined by an appointing authority, within the state personnel system.
- Board Rule 1-62.1. Probationary. A person who is not a current certified employee and who has been selected from a referral list for a permanent position but has not yet been certified to the class for that position. (3/15/11)
- 1-62.2. Promotional List. A list containing the names of individuals who have successfully completed any applicable comparative analysis process resulting from a job announcement restricted to current state employees or former state employees separated from employment due to layoff. (3/30/13)

- 1-62.2.1. Provisional Appointment. An immediate temporary appointment to a position with a person from outside of the state personnel system for which no eligible list exists. Employees with a provisional appointment do not have the rights and benefits provided to classified employees within the state personnel system except for those mandated by law and pay range minimums. Appointees shall possess the minimum qualifications for the position. Appointees shall not retain the position as provisional longer than nine (9) months from the date of entrance of duty or one (1) month after the establishment of a referral list intended to permanently fill the position, whichever date is earlier. (04/01/2020)
- 1-62.3. Qualified Applicant. An individual who submits a timely and sufficient application in response to an announcement and meets the job qualifications for the vacancy. (3/30/13)
- 1-62.4. Qualified Applicant Pool. All individuals who are eligible to be included in any applicable comparative analysis process because each of them satisfies the definition of qualified applicant for the respective position or class. (3/30/13)
- 1-62.5. Rank. Relative to position or degree of value. (1/1/14)
- 1-63. Reemployment. The right of an employee to be returned or rehired to the class from which separated by layoff.
- Board Rule 1-64. Reemployment List. List of certified employees who were involuntarily terminated or demoted due to layoff.
- 1-64.1. Referral List. A list of the top six (6) individuals drawn from the eligible list who are to be considered by the appointing authority. In cases in which a non-numerical comparative analysis has been used, the appointing authority shall also consider all applicants who are eligible for veteran's preference. (1/1/14)
- Board Rule 1-64.2. Reinstatement. An appointment of a former or current employee either to a class in which the person was certified and resigned or voluntarily demoted in good standing or to a related class at the same or lower pay range maximum. (3/15/11)
- Board Rule 1-65. Resignation. Voluntary separation from the state personnel system.
- Board Rule 1-66. Retention Credit. Credit of time and, if necessary, the calculation of an employee's ranking under the department's matrix in a layoff situation, in order to calculate the employee's retention rights. (10/1/07)
- Board Rule 1-67. Retirement. Separation of an employee from the state personnel system who is eligible to retire under the provisions of the state retirement plan in which the employee is enrolled (e.g., Public Employees' Retirement Association's defined benefit plan). (1/1/07)
- 1-68. Saved Pay Rate. Temporary means of maintaining current base pay during certain situations that accommodate base pay amounts between the maximum of a pay grade and a statutory lid.
- 1-69. Serious Health Condition. For purposes of family/medical leave, an illness, injury, impairment, physical or mental condition that requires inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider. Continuing treatment is a period of incapacity of more than three (3) calendar days, pregnancy, a chronic serious health condition, or permanent long-term condition for which there is no treatment but the patient is under supervision, or multiple treatments without which a period of incapacity would result.

1-70. Service Date. The date continuous state service begins, including state employment outside the state personnel system, but excluding temporary and student employment. Service dates do not change except for separation from service of more than ninety (90) days, or any break in a probationary period. (5/1/10)

Board Rule 1-71. Sexual Harassment. Quid pro quo sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is used as the basis for an employment decision. Hostile work environment sexual harassment is any harassment or unequal treatment based on sex, even if not sexual in nature, which results in unreasonable interference with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

1-72. Special Qualifications. Position specific requirements that add to but do not substitute for existing minimum qualifications. Special Qualifications shall not supersede nor diminish an existing minimum qualification. (04/01/2020)

Board Rule 1-73. Status. Categories that determine the rights of an employee under the state personnel system, i.e., probationary, trial service, certified, conditional, provisional, and temporary.

1-73.1. Substitute Appointment. A temporary appointment that is made to perform the duties of a filled position during a leave or for training purposes. (3/15/11)

1-74. System Maintenance Study. The process used to determine classes and/or pay grades and to properly place all affected positions into new classes. It includes class placement.

1-74.1. Temporary Appointee. This refers to a qualified person who is appointed to a position or positions for a period not to exceed nine (9) months in any twelve (12) month period inclusive of all temporary appointments with any state employer. Temporary appointees include temporary, conditional, provisional, and substitute appointments. (04/01/2020)

1-74.2. Temporary Employee. A person who holds a temporary appointment in a temporary position and is employed at-will, not having the rights and benefits provided to permanent employees, except those mandated by law and pay range minimums. (04/01/2020)

Board Rule 1-75. Tenure. Combination of rights which vest in a certified employee by virtue of certified status, seniority, and years of service.

Board Rule 1-76. Termination. Separation of an employee from the state personnel system by resignation, retirement, layoff, dismissal, or death.

Board Rule 1-76.1. Transfer. An appointment of a qualified and current employee to a different position in the same class or to a class with the same pay grade. (3/15/11)

1-77. Treatment. For purposes of family/medical leave, examination to determine if a serious health condition exists, subsequent exams to evaluate the condition, and a course of prescriptive medication or therapy requiring special equipment. Routine exams or treatments that do not require the intervention or continuing supervision of a health care provider are excluded.

Board Rule 1-77.1. Trial Service. Status of a current certified employee or reemployment applicant who promotes or, unless appointing authority requires a probationary period, a reinstated applicant. May also apply, at the discretion of the appointing authority, to a current employee who transfers within the same class or to a current certified employee or a reemployed applicant who transfers to a different class with the same pay range maximum. (3/15/11)

Board Rule 1-78. Unclassified Position. A position in state government that is not covered by the state personnel system.

**Payroll Deduction**

- 1-79. State departments and institutions of higher education shall process payroll deductions including but not limited to, those required by federal law, state statute, executive order, through partnership agreements or state sponsorship, and including: (04/01/2020)
- A. Pre-tax benefit contributions governed by the State's Salary Deduction Plan; and/or (04/01/2020)
  - B. The reimbursement of monies owed to the state from an employee (e.g., higher education tuition, uniforms, salary overpayment). (04/01/2020)
  - C. – E. Repealed. (04/01/2020)
- 1-80. All employee requests to start or terminate a payroll deduction shall be made within specific time frames and on forms approved by the Director, department head or their designee, except as otherwise required by law. (04/01/2020)

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## **Chapter 2      Jobs**

Authority for rules promulgated in this chapter is found in §24-50-101(3)(d), 24-50-104(1)(b), 24-50-104(5)(c), 24-50-104(6)(a) and (b), 24-50-104(9)(b), 24-50-109.5, and 24-50-135(2), C.R.S. Board rules are identified by cites beginning with “Board Rule”.

### **Job Evaluation System**

- 2-1.     The Director shall establish standards regarding the creation and maintenance of the job evaluation system(s) and allocation of positions, including subsequent allocation appeals, based on generally accepted techniques and standards in the profession which are uniformly applied to similarly situated employees.
- 2-2.     System maintenance studies create, amend, or abolish classes and/or include pay grade assignments. A study may include the review of all affected positions for placement in the proper new class. No allocation or appointment may be made to a proposed class until it is approved as final on a date determined by the Director. The results are not subject to appeal but are subject to “meet and confer” if requested.
- 2-3.     Changes from system maintenance studies shall be published as proposed. Appointing authorities are responsible for the timely distribution of this information.

Board Rule 2-4. Examination (“Employment and Status” chapter) and layoff (“Separation” chapter) rules do not apply to class placement as part of system maintenance studies.

### **Individual Position Review**

- 2-5.     New positions must be allocated to the proper class before any further personnel action is taken.
- 2-6.     The Director, or a delegated authority, may request a job description and evaluate a position at any time to determine the proper class.
- 2-7.     Each position shall have an accurate official (signed by the appointing authority) job description. Appointing authorities are responsible for providing an accurate official job description for each position to the department’s human resources office and a copy to the employee. Only an accurate official job description is used to allocate a position to the proper class by the department’s human resources office. (5/1/10)
  - A.     An appointing authority must submit the accurate official job description and any evaluation request to the department’s human resources office within six months when permanent changes are made to a position’s assignment.
    1.     An employee may request an evaluation of his or her position if permanent changes are made and the job description has not been evaluated or updated within the previous 12 months.
    2.     The employee’s request must be made to the appointing authority who shall submit the request, along with the accurate official job description, to the department’s human resources office.
- 2-8.     Positions shall be reviewed as expeditiously as possible according to the department’s established procedures and practices. If the evaluation takes longer than 12 months from receipt by the proper evaluator and the position is allocated upward, the department must pay the difference in base pay for the period beyond the 12 months.

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- 2-9. If a filled position is allocated to a lower pay grade, the affected employee in the position may appeal to the Director in accordance with the “Dispute Resolution” chapter. If the employee’s appeal is successful, the effective date is the date of the original allocation decision.
- 2-10. The effective date of an allocation for a filled position shall be after completion of the selection process. Vacant positions are effective when the allocation decision is made.
- A. If a filled position is allocated upward, an appointment shall be made in accordance with selection provisions. If the incumbent does not qualify or is not appointed, refer to the reallocation section of the “Separation” chapter. (1/1/18)
- B. If a filled position is allocated downward, the following applies:
1. a qualified certified or probationary employee is permitted to voluntarily demote to the position. The certified employee will be offered, in writing, the choice of the voluntary demotion or retention rights, as applicable pursuant to 24-50-124(1)(a). If there is no response by the specified date in the written offer, the employee is deemed to have accepted the demotion and waived retention rights. Only after the election is made to exercise retention rights will the certified employee be processed under the “Separation” chapter, including notice of specific retention rights; (3/30/13)
  2. a conditional employee may revert to a position in a class in which certified. If not certified in another class, but qualified for the new class and no eligible list exists, the employee may be conditionally appointed to the position;
  3. a provisional employee may be appointed to the position if qualified and no employment list exists.
- C. If a position is allocated to a different class with the same grade maximum, the employee who is qualified shall be transferred. If the incumbent is not qualified, refer to the reallocation section of the “Separation” chapter. (1/1/18)

## Chapter 3 Compensation

Authority for rules promulgated in Chapter 3, Compensation, is found in State of Colorado Constitution Article XII, Section 13, State of Colorado Revised Statutes (C.R.S.) §§24-50-104 (1)(a), (b), (c), (e), (f), (4), (5), (6), (9), and 24-50-104.5(1), 24-50-109.5, 24-50-136, 24-50-137, and 24-50-208, C.R.S. Board rules are identified by cites beginning with "Board Rule." (01/01/2021)

### General Principles

- 3-1. The Department of Personnel shall establish rules governing compensation for the state personnel system. Compensation practices shall provide for equitable treatment of similarly situated employees.
- 3-2. Pay grades shall reflect prevailing labor market compensation and any other pertinent considerations. No individual employee's base pay shall be less than the minimum of the grade or exceed a statutory lid. In the case of disciplinary action, base pay may be less than the minimum of the grade for a period not to exceed twelve (12) months, subject to the FLSA requirements.

### Annual Compensation Survey

- 3-3. The Department of Personnel shall conduct the annual compensation survey. The Director shall establish and publish the distribution of annual compensation changes among salaries, including establishment of statewide priority groups and group benefit contributions, which shall be effective as provided by law. (9/1/12)
- 3-4. When upward pay grade changes are implemented, the grade minimum and maximum shall be adjusted and no employee shall be paid outside of the new grade, except in disciplinary actions resulting in salary temporarily below the new minimum and continuation of saved pay above the new maximum. (7/1/07)
- 3-5. If pay grade changes are downward, employees' base pay shall remain unchanged, subject to the statutory three (3) year limitation on saved pay.

### Pay Rates

- 3-6. The Department of Personnel shall publish the annual pay plan. Departments shall use an hourly rate based on an annual salary to compensate employees who do not work a predetermined or full schedule. (1/1/18)
- 3-7. Saved pay applies to downward movements due to individual allocation, system maintenance studies, and the annual compensation survey to maintain an employee's current base pay when it falls above the new grade maximum. It may also apply when retention rights are exercised pursuant to Chapter 7, Separation. In no case shall the employee's base pay remain above the grade maximum after three (3) years from the action, even if it results in a loss in pay. (1/1/18)
- 3-8. Unless authorized by the Director, the rate resulting from multiple actions effective on the same date shall be computed in the following order. The Director may withhold salary adjustments for any employee with a final overall rating of needs improvement, except as provided in Rule 3-4.
  - A. System maintenance studies.
  - B. Upward, downward, or lateral movements.
  - C. Repealed. (8/1/08)

- D. Changes in pay grade minimums and maximums to implement approved annual compensation changes to the pay structure.
  - E. Across-the-board increases authorized by the General Assembly. (1/1/18)
  - F. Adjustments to the base pay of employees due to merit pay in approved annual compensation changes, subject to the new grade maximum and Rule 3-19(C)(1)(a). (1/1/18)
  - G. Bring salaries to the new grade minimum as a result of compensation survey pay grade changes, except in disciplinary actions. (1/1/18)
  - H. Non-base merit payments (based on new annual salary). (1/1/18)
- 3-9. The appointing authority shall determine the hiring salary within the pay grade for a new employee, including one returning after resignation, which is typically the grade minimum unless recruitment difficulty or other unusual conditions exist. (7/1/06)
- A. Recruitment difficulty means difficulty in obtaining qualified applicants or an inadequate number of candidates to promote competition despite recruitment efforts.
  - B. Unusual conditions exist when the position requires experience and competencies beyond the entry level or the best candidate cannot be obtained by hiring at the minimum of the pay grade. (1/1/18)
  - C. The appointing authority's determination shall consider such factors as, but not limited to, labor market supply, recruitment efforts, nature of the assignment and required competencies, qualifications and salary expectations of the best candidate, salaries of current and recently hired employees in similar positions in the department, available funds and the long-term impact on personal services budgets of hiring above the minimum of the pay grade.
- 3-10. In the case of fiscal emergency or other budget reasons, an employee may agree to voluntarily reduce current base pay, which shall be approved in writing by the appointing authority and employee. If funds become available at a later date, the department may restore base pay to any rate up to, and including, the former base pay. This policy shall not be used to substitute for other provisions in Chapter 3, Compensation.
- 3-11. When an unclassified position is brought into the state personnel system, the base pay for an employee appointed to the position shall be computed in accordance with the Department of Personnel's directives that shall ensure that total compensation is preserved to the greatest extent possible, except that base pay shall not exceed the grade maximum. (1/1/18)

### **Downward Adjustments**

- 3-12. Downward movement is a change to a different class with a lower range maximum (e.g., non-disciplinary or disciplinary demotions, individual allocations, system maintenance studies including class placement, or the annual compensation survey).
- 3-13. In the case of system maintenance studies and individual allocations of positions, the employee's base pay shall remain the same, including saved pay.

- A. A department head has sole discretion to grant saved pay when employees exercise retention rights and the decision shall be applied consistently throughout the retention area. If saved pay is granted, the employee's name shall not be placed on a reemployment list. (7/1/07)
- 3-14. In the case of other downward movements, the base pay shall not be above the maximum in the new grade.
- A. Upon reversion of a trial service employee to the previously certified class, base pay shall be the amount the employee would be making had the promotion or reinstatement not occurred. (1/1/14)

### **Upward Adjustments**

- 3-15. Upward movement is a change to a different class with a higher range maximum (e.g., promotions, individual allocations, system maintenance studies including class placement, or the annual compensation survey).
- 3-16. In the case of system maintenance studies, employees' base pay shall remain the same. If the Director finds that severe and immediate recruitment and retention problems make it imperative to increase pay to maintain critical services, the Director may order that base pay be increased up to the percentage increase for the new class.
- 3-17. In the case of other upward movements, the employee's base pay may increase or remain the same, in which case the employee would receive the economic opportunity by moving to the new grade. In no case shall the new base rate be lower than the minimum, except in disciplinary actions, or higher than the maximum of the new grade. Continuation of a salary increase is subject to satisfactory completion of the trial service period.
- A. When conditional employees move upward, the base pay shall be computed based on the certified class.

### **Lateral Adjustments**

- 3-18. Lateral movement is a change to a different class or position with the same range maximum (e.g., transfers, individual allocations, system maintenance studies including class placement), or an in-range salary movement in the same class and position. Base pay can be offered at a rate that falls within the pay range of the class and does not exceed the grade maximum. In addition, in-range salary movements are subject to the provisions below. (1/1/14)

In-Range Salary Movements. A department may use these discretionary movements to increase base salaries of permanent employees who remain in their current classes and positions when there is a critical need not addressed by any other pay mechanism. The use of in-range salary movements is not guaranteed and shall be funded within existing budgets. These movements shall not be retroactive and unless specifically noted in these rules, frequency is limited to one (1) in-range salary movement in a twelve (12) month period. No aspect of granting these movements is subject to grievance or appeal, except for alleged discrimination; however, an alleged violation of the department's plan can be disputed. A department's decision in the dispute is final and no further recourse is available. Once granted, a reduction in base salary is subject to appeal. Departments shall develop a written plan addressing appropriate criteria for the use of any movement based on sound business practice and needs, e.g., eligibility, funding sources, approval requirements, and measures to ensure consistent use. The plan shall be communicated within the department and a copy provided to the Director prior to implementation. If granted, there shall be an individual written agreement between the employee and the appointing authority that stipulates the terms and conditions of the movement. Records of any aspect of these movements shall be provided to the Director when requested. (02/2017)

- A. Salary Range Compression. Used as a salary leveling increase where longer-term or more experienced employees are paid lower in the range for the class than new hires or less experienced employees over a period of time resulting in documented retention difficulties. Thus, there is a valid need to increase one (1) or more employee's base salary in the class to recognize contributions equal to or greater than the newly hired or less experienced employees. Justification shall be required based on facts. To be eligible, an employee shall be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to ten percent (10%) or the maximum permitted by the department's policy on hiring salaries, whichever is greater, and subject to the pay grade maximum. (9/1/12)
- B. Counteroffer. Used when an employee with critical, strategic skills receives a higher salary offer from another department or outside employer and the appointing authority needs to increase the employee's base salary for retention purposes. To be eligible, an employee shall be performing satisfactorily as evidenced by the most recent final overall performance rating. Written confirmation of the other entity's salary offer is required. The increase may be up to ten percent (10%) or the maximum permitted by the department's policy on promotional pay, whichever is greater, and subject to the pay grade maximum.
- C. Delayed Transfer or Promotional Pay Increase. Used when a transfer or promotion is made with no salary increase or partial salary increase because performance expectations are unproven and/or funds may be unavailable at the time of transfer or promotion. This is a one (1) time base salary increase within twelve (12) months of the date of transfer or promotion when funds become available and the employee's contributions are fulfilled. The intent to provide a later salary increase shall be documented at the time of the transfer or promotion. To be eligible, an employee shall be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to ten percent (10%) or the maximum amount permitted in the department's policy on transfer or promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase. (1/1/18)

- D. New Hires. Used at the time an employee is hired when performance expectations are unproven and/or funds may be unavailable. This is a one (1) time base salary increase within twelve (12) months of hire. The intent to provide a later salary increase shall be documented at the time of hire. To be eligible, early satisfactory completion of specified training objectives shall be documented. This is limited to a one (1) time increase up to ten percent (10%) or the maximum permitted by the department's policy on promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase. (02/2017)
- E. Competency-Based Increase. Used when an employee applies the complete set, or a subset, of competencies required to successfully perform the work of a specific position. Required competencies shall be specifically defined with deadlines and evaluation criteria for achievement, and shall be communicated in writing to the employee prior to granting an increase. Competencies that are the basis for this increase shall be required to perform permanent, essential functions assigned to the position. The intent of this increase is to promote career development by aligning pay increases with achieving all required competencies to fully perform the job. Increases are limited to no more than two (2) per twelve (12) month period. This type of increase shall not be applied as a substitute for Merit Pay. To be eligible, an employee shall demonstrate required competencies as evidenced by a written evaluation by the appointing authority. The increase may be up to ten percent (10%) or the maximum permitted by the department's policy, whichever is greater, and subject to the pay grade maximum.
- F. Equity Adjustment. An appointing authority has the ability to grant an equity adjustment or put a plan in place to address pay inequities between employees who perform substantially similar work. An equity adjustment shall not include the reduction of any employee's pay. The in-range salary adjustment shall be effective the first day of the next pay period after the appointing authority grants an equity adjustment.

### **Merit Pay (9/1/12)**

- 3-19. Merit pay consists of both base and non-base building adjustments. Any permanent employee is eligible for merit pay, except as provided below and as otherwise provided in Chapter 3, Compensation. Prior to the payment of merit pay, the Director shall specify and publish the percentage for any merit pay increase for applicable priority groups. Adjustments are effective on July 1. The employee shall be employed on July 1 to receive payment. The employee's current department as of July 1 is responsible for payment, unless arrangements are made whereas the transferring department will provide full payment of a portion of any non-base building merit pay increase. (1/1/18)
  - A. If the final overall rating is needs improvement, the employee is ineligible for any merit pay. Merit pay shall not be denied because of a corrective or disciplinary action issued for an incident after the close of the previous performance cycle. (9/1/12)
  - B. Employees hired into the state personnel system during the performance evaluation cycle shall receive a prorated portion of any base or non-base building merit pay. The proration shall be based on the number of calendar months worked. (1/1/18)
  - C. Base building merit pay shall be based on final performance evaluation and salary position within the pay range on June 1. (1/1/18)
    - 1. Payment of base building merit pay shall not cause an employee's base pay to exceed the grade maximum, and is paid as regular salary. (9/1/12)

- a. The payment of any remaining portion of base building merit pay that would cause base pay to exceed grade maximum shall be paid as a one-time, non-base building lump sum in the July payroll. The statutory salary lid does not apply to such a payment. (1/1/14)
2. Payment of base building market pay shall be a comparison of state personnel system salaries to market salaries for the purpose of measuring competitiveness. Market shall result in base building increases to pay, only when an employee's salary is below a newly adjusted pay range minimum. (9/1/12)
- D. Non-base building merit pay shall be a non-base building or one (1) time lump sum payment and shall be calculated after any annual compensation adjustments, including base building merit pay. (1/1/18)
  1. Non-base building merit pay shall be earned each year and shall be paid as a one-time lump sum in the July payroll. The grade maximum and statutory lid do not apply to non-base building merit pay. (9/1/12)
  2. An employee shall be employed on the date of the payment in order to be eligible to receive a non-base building merit payment. (9/1/12)
- E. Base building or non-base building merit pay may be provided to employees, at a department's discretion if approved by the Governor's Office of State Planning and Budgeting, when funded from a department's state employee reserve fund using department reversions. These discretionary merit payments shall only be paid to certified employees, in order of priority grouping established by the Director. (1/1/18)
  1. Base building merit pay increases funded from a department's state employee reserve fund shall be provided only if the department can justify sustainability as determined by the Governor's Office of State Planning and Budgeting. (9/1/12)
  2. Merit pay increases funded from a department's state employee reserve fund shall not be provided more than one (1) time in a twelve (12) month period per employee. 9/1/12)
  3. Repealed. (1/1/18)
  4. Repealed. (1/1/18)

### Incentives

- 3-20. Departments are strongly encouraged to use incentives. (7/1/06)
- 3-21. An appointing authority may grant an immediate non-base cash or non-cash incentive award to an employee in recognition of special accomplishments or contributions throughout the year or to augment merit pay, e.g., on-the-spot cash awards, work-life options, or administrative leave, in accordance with a department's established incentive plan. Other than augmenting merit pay, incentives shall not be used to supplement or substitute for annual compensation adjustments or other base pay movements. The statutory salary lid does not apply to these incentives. (9/1/12)
- A. Departments shall have an incentive plan prior to the use of incentives. Such plans shall include eligibility criteria, the types of incentives allowed, cash amounts or limits and payment methods, and a communication plan. Such plans shall be developed with the input of employees and managers.

1. If a department uses a type of incentive that shares cost savings from innovations, the following applies.
  - a. Employees are ineligible if they are wholly responsible for control and operation of a division (or equivalent), the primary assignment includes responsibility for identifying efficiencies and cost reductions, or the position has statewide program or budget authority.
  - b. Savings are the result of innovative ideas that increase productivity and service levels while decreasing costs. Savings are not the result of normal progressive business evolution, obvious solutions to mandated budget cuts, cost avoidance or revenue enhancement, nor do they have adverse cost impact on other departments.
  - c. Savings are the difference between anticipated expenditures prior to implementation and actual expenditures following implementation for a full twelve (12) month period. The complete award amount shall be no more than five percent (5%) of the savings, not to exceed a total of five thousand dollars (\$5,000) per employee or group of employees.

3-22. Repealed. (8/1/08)

3-23. Repealed. (8/1/08)

#### **Medical Plan**

3-24. Employees in the medical pay plan shall be compensated based solely on performance as established in the required annual contract to be negotiated by July 1 of the contract year, or within thirty (30) days of hire or movement within the medical pay plan for the remainder of the contract year. Employees are not eligible for any pay adjustments, such as merit pay. Current performance contracts may be modified during the contract year but not compensation. Change in compensation shall only occur at the end of a contract period, unless an employee moves to another position, and may increase, decrease, or remain unchanged from the previous year. In the case of upward or downward movement in the medical pay plan, compensation shall be no lower than the minimum or higher than the maximum rates of the new grade and a new contract shall be negotiated for the remainder of the contract year. (9/1/12)

- A. If no contract is negotiated, the existing contract continues and base pay stays the same until a new contract is negotiated. Employees in the medical pay plan may grieve the rate unless it is lower, which is then subject to appeal. If the employee moves into or out of the medical pay plan into another open-range class, the base pay shall be negotiated subject to the grade maximum of the new class.

#### **FLSA and Overtime**

3-25. All employees are covered by the FLSA. Under the FLSA, the state is considered to be a single employer. Employees cannot waive their rights under the FLSA. (04/01/2020)

3-26. The state's standard FLSA workweek is Saturday at 12:00am through Friday at 11:59pm. This standard FLSA workweek applies to agencies that use the official payroll system designated by the State Controller. (11/1/2019)

- A. For law enforcement, healthcare, and fire protection employees, appointing authorities may adopt a “work period” under the FLSA between seven (7) consecutive days to twenty-eight (28) consecutive days in length. Overtime compensation is not required until the employee satisfies the maximum hour standard under the federal regulations. (11/1/2019)
- 3-27. Overtime is the actual hours worked by a nonexempt employee in excess of the forty (40) hours during a standard FLSA workweek or in excess of established work hours in adopted work periods for law enforcement, healthcare, and fire protection employees. Such excess hours are paid at one and one-half (1 ½) times the employee’s regular hourly base pay rate, including applicable premium pay. Nonexempt employees paid on a biweekly or monthly pay cycle shall be paid overtime on the employee’s next regularly scheduled payroll following the period the overtime was earned. Biweekly employees shall be paid on the biweekly payroll and monthly employees shall be paid on the monthly payroll. (11/1/2019)
- A. Overtime for nonexempt employees shall be approved in accordance with a department’s procedure. A department head shall establish a policy to address unauthorized overtime work; however, prohibition of unauthorized overtime does not avoid the requirement to pay if it is actually worked.
- B. Compensatory time in lieu of monetary payment is allowed if there is a written agreement between the department and any employee hired after April 15, 1986. Written agreements for those hired prior to April 15, 1986, are unnecessary provided that the department had a regular practice in place for granting compensatory time. Acceptance of compensatory time may be a condition of employment for new employees. Appointing authorities shall ensure that compensatory time is scheduled as soon as practical. Compensatory time shall not exceed two hundred and forty (240) hours (or four hundred and eighty (480) hours – see the FLSA) and any additional overtime shall be paid as indicated in Rule 3-27. If a department wants to place limits on the accrual or payment of compensatory time up to two hundred and forty (240) hours (or four hundred and eighty (480) hours – see the FLSA), a policy shall be developed and communicated prior to use and on an ongoing basis. Unused compensatory time at termination or transfer to another department shall be paid at that time. (11/1/2019)

### **Eligibility**

- 3-28. Department heads are responsible for determining if each position is exempt or nonexempt based on the actual duties performed regardless of class. Determinations shall be entered into the payroll system and a record kept on file.
- 3-29. An exempt employee’s pay is not subject to reduction except as follows: (04/01/2020)
- A. Deductions in increments of one (1) day are allowed for a major workplace rule violation.
- B. Deductions are allowed for any amount of time if:
1. A leave of absence was not requested or was denied and accrued leave is not used;
  2. The time is covered by the Family and Medical Leave Act (FMLA); or the state family medical leave; (04/01/2020)
  3. Accrued leave is exhausted;
  4. The time is a voluntary furlough; or

5. The time is a mandatory furlough for budgetary reasons. (04/01/2020)
- 3-30. Exempt employees shall not be granted extra pay for hours worked in excess of forty (40) hours in a workweek. An appointing authority may grant discretionary administrative leave or other incentives but such awards shall not be tied to hours worked. (7/1/06)
- 3-31. An employee may request a review of a decision regarding eligibility, calculation of overtime hours, and payment to the Director in accordance with Chapter 8, Dispute Resolution.

### **Dual Employment**

- 3-32. In a properly authorized dual employment arrangement, the written agreement shall include the exemption status designation based on the combined duties, the department responsible for paying any overtime, and the overtime hourly rate. The overtime rate, if applicable, is either the regular rate from one (1) of the jobs or a weighted rate from both jobs. Work time from both jobs is combined to calculate overtime. (1/1/18)

### **Work Hours**

- 3-33. In order to minimize overtime liability, appointing authorities may deny, delay, or cancel leave before it is taken. Appointing authorities may require the use of accrued compensatory time but cannot schedule compensatory time if that will make an employee forfeit annual leave at the end of the fiscal year. (1/1/18)
- 3-34. Compensatory time is not leave, but a form of compensation. Therefore, it is not included in the calculation of work hours for overtime purposes.
- 3-35. Overtime does not accrue until a nonexempt employee works more than the maximum hours allowed in a standard FLSA workweek or designated work period as permitted in Rule 3-26 (A). All time worked shall be recorded on a daily basis. Overtime is calculated based on the total time worked in the standard FLSA workweek or designated work period as permitted in Rule 3-26 (A), rounded to the nearest quarter ( $\frac{1}{4}$ ) hour. Overtime pay for nonexempt employees for time worked over forty (40) hours in a standard FLSA workweek or in excess of established work hours in adopted work periods as permitted in Rule 3-26 (A), excludes paid leave or holiday leave with the exception of Essential Positions, see Rule 3-36. If operational needs require an employee to regularly report to work early or leave late, that time is counted as work hours for the calculation of weekly overtime. (04/01/2020)
- 3-36. Essential nonexempt positions, as designated by a department head, shall have paid leave counted as work time. Essential positions perform law enforcement, highway maintenance, and support services directly responsible for the health, safety, and welfare of patients, residents, students, and inmates. (04/01/2020)
- 3-37. Scheduled meal periods are discretionary. Scheduled meal periods are not work time and shall be at least twenty (20) minutes. However, if the employee is materially interrupted or not completely free from duties, the meal period is counted as work time.
- 3-38. Work breaks are discretionary. If granted, breaks of up to twenty (20) minutes are work time. Breaks shall not offset other work time or substitute for paid leave, not be taken at the beginning or end of the workday, nor be used to extend meal periods.
- 3-39. Ordinary travel to and from work is not work time. Travel from work site to work site is work time. When an employee is required to travel a substantial distance to perform a job away from the regular work site, the travel is work time.

- 3-40. Mandatory training or meetings are work time. Voluntary training during work hours, as approved by the appointing authority, which is directly related to an employee's job and is designed to enhance performance, is work time. Voluntary training after hours to gain additional skill or knowledge is not work time, even if it is job related.

### Recordkeeping

- 3-41. The FLSA requires that certain basic records be maintained for both exempt and nonexempt employees. Each department is accountable for maintaining those records. (7/1/07)
- 3-42. Time records shall be approved by both the employee and the supervisor. The time records are the basis for overtime calculation and compensation. (11/1/2019)

### Other Premium Pay

- 3-43. Shift Differential is additional pay beyond base pay for employees working shifts. Eligible classes are published in the annual pay plan. Department heads may designate eligibility for individual positions in classes not published and shall maintain records for such cases. Shift differential does not apply to any periods of paid leave. Second shift rate applies when half or more of the scheduled work hours fall between 4:00 p.m. and 11:00 p.m. Third shift rate applies when half or more of the scheduled work hours fall between 11:00 p.m. and 6:00 a.m. If hours are evenly split between shifts, the higher shift differential rate applies to all hours worked during the shift. (1/1/18)
- 3-44. Call Back applies when an eligible employee is required to report to work before the start or after the end of a scheduled shift. If there is no release from work between the call back hours and regular shift, it is considered a continuation of the shift and call back does not apply. When call back applies, a minimum of two (2) hours of the employee's regular base pay is guaranteed. Eligible employees are those who are eligible for overtime, and any call back time is counted as work time. Employees exempt from overtime are also eligible when approved by a department head. (1/1/18)
- 3-45. On Call is additional pay beyond base pay for employees specifically assigned, in advance, to be accessible outside of normal work hours and where freedom of movement and use of personal time is significantly restricted. Eligible classes and the rate are published in the annual pay plan. A department head may designate eligibility for individual positions in classes not published and maintain records of such on-call designations. Only time while actually on call shall be paid at the special rate. In call back situations, employees eligible for both on call and call back pay shall receive call back pay only. (1/1/18)
- 3-46. Second Domicile is additional discretionary pay up to ten percent (10%) of base pay for employees who are required to maintain a second domicile for more than ten (10) consecutive calendar days while working out-of-state on official state business. The department head shall authorize such payments.
- 3-47. Repealed. (1/1/18)
- 3-48. Housing Premium is a stipend granted by a department head to designated employees living and working in high housing cost areas with demonstrated recruitment and retention problems. It is not part of the base rate and may begin or end at any time. Records on any aspect of this premium shall be provided to the Director when requested.

- 3-49. Discretionary Pay Differentials. A department may use non-base building discretionary pay differentials on a temporary basis, which shall be funded within existing budgets. Use of these pay differentials is at the discretion of the appointing authority and shall not be used as a substitute for annual compensation adjustments, other pay policies, or promotions. No differential is guaranteed and, if granted, may be discontinued at any time. No aspect of any discretionary pay differential is subject to grievance or appeal, except for discrimination; however, an alleged violation of the department's plan can be disputed. A department's decision in the dispute is final and no further recourse is available. Departments shall develop and communicate a written plan addressing appropriate criteria for the use of any differential based on sound business practice and needs. If granted, there shall be an individual written agreement between the employee and appointing authority that stipulates the terms and conditions of the differential, including the dates the differential will begin and end. Records of any aspect of these differentials shall be provided to the Director when requested. (8/1/08)
- A. Counteroffer to a verifiable job offer may be used when an employee with critical strategic skills receives a higher salary offer from another department or outside employer and the appointing authority needs to retain the employee. The sum of a non-base building differential and current base pay cannot exceed a statutory lid in any given month and may be paid in one (1) or more payments. (8/1/08)
- B. Signing bonus is a non-base building lump sum that may be used to attract new permanent employees into the state personnel system. It may be paid in one (1) or several payments; however, the sum of the bonus and current base pay cannot exceed a statutory lid in any given month. Signing bonuses may be used for the following reasons:
1. To fill positions in critical occupations where there is a documented shortage in the labor market and recruitment or retention difficulty in the department that jeopardizes its mission; or,
  2. When the applicant possesses a unique, critical skill in relation to the job market.
- C. Referral award is a non-base building lump sum that may be granted to a current employee for the referral and subsequent hire of a new employee into the state personnel system where the position requires a unique, specialized skill and there is a documented shortage in the labor market and recruitment or retention difficulty in the department. This award is to be used for permanent employees unless the Director grants an exception. Employees who influence or are responsible for hiring and those performing recruitment as part of their regular assignments are ineligible. The sum of the award and current base pay cannot exceed a statutory lid in any given month.
- D. Temporary pay differential is a non-base building award that may be granted to a current permanent employee in the same position. The sum of the temporary award and current base pay shall not exceed a statutory lid in any given month and is paid through regular payroll. This differential shall not be used as a substitute for the promotional or allocation process. Temporary pay differentials may be used for the following reasons:
1. Acting assignment where the employee assumes the full set of duties (not "in absence of") of a higher-level position that is vacant or the incumbent is on extended leave for a period longer than thirty (30) days but less than nine (9) months. The differential shall not exceed nine (9) months for any given acting assignment;
  2. Long-term project assignment that is not an expected or customary part of the regular assignment and is critical to the mission and operations of the department as defined by the purpose of the project, its time frame, and the critical nature and expected results;

3. Retain a unique, specialized set of skills or knowledge that is critical to the mission and productivity of the department. The loss would result in documented severe adverse effect on the department's mission and productivity; or
  4. During the declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, when it is necessary to assign employees work to maintain continuity of operations and appropriate staffing levels critical to the mission and operations of the organization. (08/01/2020)
- 3-50. Hazardous Duty is a non-base building premium that may be granted to positions working in occupations where exposure to physical hazards is not a customary part or expectation of the occupation and its preparation for entry. Such positions work for a majority of their time in settings that involve clear, direct, and unavoidable exposure to risk of major injury or loss of life even after making allowances for safety. This premium is not guaranteed and, if granted, may be discontinued at any time. No aspect of this premium pay can be grieved or appealed, except for alleged discrimination. Departments shall develop appropriate criteria for the use of hazard pay based on sound business practice and need, and communicate these criteria prior to use of this premium. The premium rate will be published in the annual pay plan and, in combination with current base pay and other premium pay, cannot exceed a statutory lid in any given month. (1/1/18)

#### **Postemployment Compensation (9/1/12)**

- 3-51. Postemployment compensation, which includes voluntary separation incentives or severance pay, are discretionary financial payments that may be offered to certified employees when a layoff has happened or may happen based upon documented lack of funds, lack of work, or reorganization. Postemployment compensation may include, but is not limited to, a hiring preference, payment towards the continuation of health benefits, tuition or educational training vouchers, portion of salary, placement on a reemployment list. Postemployment compensation may be contingent upon an employee's waiver of retention and reemployment rights, but waiving those rights does not affect the employee's eligibility for reinstatement. A department head shall establish a postemployment compensation plan before a department makes any postemployment compensation offers. (1/1/14)
- 3-52. Any total postemployment compensation payment and other benefits shall not exceed an amount equal to one (1) week of an employee's salary for every year of his or her service, up to eighteen (18) weeks. Any additional limitations shall be established and published by the director, taking into consideration prevailing market practice and other factors. (1/1/18)
- 3-53. Repealed. (1/1/18)
- 3-54. The employee and department shall execute a written contract before payment of any post employment compensation. The contract shall include the following provisions. (1/1/14)
- A. A statement that the employee is required to pay all applicable taxes on the payment;
  - B. The employee's acknowledgement that the state will withhold taxes according to law before payment;
  - C. The employee's agreement to waive retention and reemployment rights, if applicable, along with a statement that the contract is voluntary and not coerced or obtained through means other than the terms of the contract; (9/1/12)
  - D. The date of the employee's last day of work;

- E. An acknowledgement that no payment will be made until after the last day of work and compliance with other provisions of the contract; and,
- F. Upon signature, a copy of each contract shall be provided to the state personnel director.  
(9/1/12)
- G. The employee's agreement to waive any and all claims they may have or assert against the employer, relative to their employment prior to the execution of this agreement.  
(9/1/12)

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## **Chapter 4      Employment and Status**

Authority for the rules promulgated in Chapter 4, Employment and Status, is found in State of Colorado Constitution Article XII, Sections 13, 14 and 15, and § § 24-50-109.5, 24-50-112.5, 24-50-114, 24-50-132, 24-50-136 and 24-50-137, C.R.S. Board rules are identified by cites beginning with "Board Rule". Definitions for many of the terms utilized in this chapter may be found in Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions. Board rules are identified by cites beginning with "Board Rule".

### **General Principles**

Board Rule 4-1. State residents and otherwise qualified applicants shall have an equal opportunity for entry into the state personnel system through fair and open competition. Selection and appointment to positions within the state personnel system shall be made according to merit and fitness, based upon the quality of performance and job-related ability as ascertained by the comparative analysis process. The selection process utilized to fill any vacancy shall uphold the protections of Colorado's constitutional merit based personnel system. (3/30/13)

Board Rule 4-2. All applicants shall meet minimum and special qualifications for the vacancy in order to be included in the comparative analysis process, referred for an interview or appointed to a position. Any required job qualifications shall be consistent with those minimum qualifications established by the State Personnel Director for classified positions within the state personnel system. (3/30/13)

4-3. Appointing authorities shall consult with the human resource personnel for their department throughout the selection process and comply with any agreement regarding delegation of selection functions entered into between the department and the Director. Nothing in these rules shall negate the proper delegation of authority of human resource functions from the Director to state agencies' human resources personnel nor constrain the Director's statutory authority to provide consulting services, as well as policy and operation leadership, in the area of professional management of state government's human resources. (3/30/13)

Board Rule 4-4. Persons with disabilities, in accordance with federal and state law, may request reasonable accommodation throughout the selection process. (3/30/13)

### **Appeals**

Board Rule 4-5. All applicants shall meet minimum and special qualifications for the vacancy in order to be included in the comparative analysis process, referred for an interview or appointed to a position. Any required job qualifications shall be consistent with those minimum qualifications established by the State Personnel Director for classified positions within the state personnel system. (3/30/13)

Board Rule 4-6. Applicants directly affected by the selection and comparative analysis process may petition the Board for review when it appears that the decision of the appointing authority violates an employee's rights under the federal or state constitution, part 4 of article 34 of title 24, or article 50.5 of title 24. (3/30/13)

Board Rule 4-7. Any person currently or previously employed by the state of Colorado, not within the state personnel system, shall successfully complete the selection process before being placed in a position in the state personnel system. Treatment of such person is subject to the provisions of § 24-50-136, C.R.S. This includes political subdivisions of the state with similar merit systems that have a formal arrangement with the Board. (3/30/13)

- 4-8. Only applicants directly affected by the selection and comparative analysis process may file a written appeal with the Director in accordance with Chapter 8, Dispute Resolution. (01/01/2021)
- 4-9. An applicant who has been removed from an employment list or removed from consideration during the selection process may request a review by the Director as outlined in Chapter 8, Dispute Resolution. (01/01/2021)

**Notifications**

- 4-10. At any point in the selection process, but no later than ten (10) days after an accepted job offer, all applicants removed from consideration shall be notified of their elimination from consideration. These notifications shall include appeal rights. (01/01/2021)

**Determining How to Fill a Vacancy / Eligible List**

- 4-11. The appointing authority has the following choices in assessing candidates:
- A. Appoint an eligible candidate who is a transfer, non-disciplinary demotion or reinstatement;
  - B. Appropriate an existing eligible list if a re-employment list does not exist; or
  - C. Post an announcement and engage in fair and open competition through a comparative analysis. The appointing authority shall not deviate from this decision during the selection process, unless the position is filled by another method of appointment due to valid articulated business reasons. (1/1/14)
- 4-12. If filling a vacancy from an employment list, employment lists shall be used in the following order of priority: departmental reemployment, promotional, then open-competitive. (3/30/13)
- 4-13. No eligible list shall be established if:
- A. A departmental reemployment list with a qualified and willing individual exists for the class of the position in question, or
  - B. Current eligible list of equal or higher priority exists for the position in question. (3/30/13)
- 4-14. The duration of an open competitive or promotional eligible list shall be a minimum of thirty (30) days, and that eligible list may be extended by the appointing authority for up to twelve (12) months, unless further extended as follows:
- A. The Director shall have the discretion to extend a current eligible list.
  - B. The Director shall have the discretion to resurrect an expired eligible list within one (1) year of the initial expiration date of the list.
  - C. An appointing authority shall have the discretion to appropriate a qualified applicant pool for identical or highly similar positions justified through competent job analyses. (01/01/2021)
- 4-15. Cancellation or expiration of a list does not affect the legal rights of employees on military leave. (3/30/13)

Board Rule 4-16. An employee or an appointing authority may initiate a transfer. When the appointing authority(s) initiates the transfer, for reasonable business necessity, within the same department and the employee refuses it, the employee is deemed to have resigned. If the transfer is beyond a twenty-five (25) mile radius of the employee's current work location, is longer than six (6) months, and was not a condition of employment, the employee's name is placed on the reemployment list. (3/30/13)

4-17. A person may be reinstated to a related class with the same or lower pay range maximum than the previously certified class. (3/30/13)

4-18. Provisional appointments may be made only if the position cannot be filled conditionally. (3/30/13)

### **Reemployment Lists**

4-19. Employees on a departmental reemployment list may limit their availability to specific locations and work schedules. Departmental reemployment lists last for one year. (3/30/13)

### **Residency Requirements**

Board Rule 4-20. A department may request that the Director grant a residency waiver when the department can show there is an insufficient in-state applicant pool. If the Director denies a waiver, the department may submit the request to the Board within ten (10) days. In its review of the request, the Board may grant the residency waiver if the department can show there is an insufficient in-state applicant pool, including, but not limited to, consideration of the following factors:

- A. The position(s) involved requires special education or training; or
- B. The position(s) involved requires special professional or technical qualifications; and
- C. It is not feasible to train and hire from within. (3/30/13)

### **Job Announcement Requirements**

4-21. Job announcements shall be posted in such a manner as to give potential applicants notice of a vacancy, a reasonable opportunity to apply for the vacancy, notice of the required application documentation, notice of appeal rights, and a description of the position. In addition, all job announcements shall:

- A. Be posted for a reasonable amount of time and in locations where potential applicants might reasonably expect to find them;
- B. Specify the following:
  - 1. The class to which the vacancy is classified within the state personnel system;
  - 2. The pay range or anticipated hiring pay rate for that classification;
  - 3. The working location for the vacancy;
  - 4. The closing date for accepting applications for the vacancy;
  - 5. The minimum qualifications for the vacancy;
  - 6. The nature of required experience and/or education for the vacancy;

7. That experience may substitute for the required education, except where such education is required by law or accreditation standards. The Department may specify the nature of experience that substitutes for education;
8. Any additional special qualifications for the vacancy;
9. Any preferred qualifications for the vacancy;
10. Any conditions of employment, including physical requirements or background check;
11. The documentation which shall be submitted in order for the application to be reviewed and, if any forms shall be completed, where those forms may be obtained; and
12. The address to which the application shall be submitted. (3/30/13)

### **Minimum & Special Qualifications**

- 4-22. Required experience, education, licensure and/or certification may not be changed unless either validated by a competent job analysis or approved in writing by the Director. (3/30/13)

### **Comparative Analysis / Eligible List**

- 4-23. The assessment process is considered to be competitive if a reasonable opportunity was provided to potentially qualified persons to apply and compete against the same job-related standards. Any comparative analysis shall be a professionally accepted standard that compares specific job-related knowledge, skills, abilities, behaviors and other competencies. Comparative analysis shall meet professionally accepted standards for assessments of qualifications, competencies and job fit. (3/30/13)
- 4-24. Comparative analysis shall consist of professionally accepted assessments of job-related qualifications, competencies, knowledge, skills, abilities, and job fit, including but not limited to structured interviews, application/resume review, oral examinations, written objective tests, written narrative tests, performance tests, training and/or experience evaluations, and physical capacity tests. Assessment tools and/or examinations shall be developed, administered, and scored in compliance with professional guidelines and state and federal law. If multiple components are used to assess qualifications, the applicant may be required to pass one step before proceeding to the next. All examination materials and scores are confidential except as provided by the Colorado Open Records Act. (3/30/13)
- 4-25. An eligible list shall be considered established at the time when any and all applicable comparative analysis is completed. (3/30/13)

### **Testing & Examinations**

- 4-26. All examinations and assessments are subject to review and approval by the Director. (3/30/13)
- 4-27. If the department initiates an examination, then:
- A. The examination portion of the process shall be completed;
  - B. The examinations scored in accordance with professional standards; and
  - C. The applicants ranked accordingly. (3/30/13)

- 4-28. Examinations do not have to be scored if:
- A. The departmental human resources director determines that the testing process has been compromised and notifies all qualified applicants of that determination, the basis for the determination and the next step in the selection process; or
  - B. Permission to fill the position has been withdrawn. (3/30/13)

**Background Checks**

- 4-29. Background investigations and physical or psychological examinations are allowed when validated by a competent job analysis or state or federal guidelines. (3/30/13)

**Referral and Interview/ Eligible List**

- 4-30. If the selection process results in fewer than six (6) applicants on an eligible list, the list may be supplemented by additional applicants obtained through further posting and comparative analysis for the vacancy, as follows:
- A. If none of the qualifications for the vacancy are changed then the same process shall be administered and the results from both postings shall then be integrated.
  - B. If any qualifications are changed, a new recruitment will be initiated. (1/1/14)

Board Rule 4-31. Addition of candidates leading to an adjustment of placement on an eligible list due to open continuous recruitment shall not affect prior appointments or referrals from which an appointment has not been made. (1/1/14)

- 4-32. If a departmental reemployment list exists, all those qualified are notified and referred in alphabetical order and no other employment lists are used. (3/30/13)
- 4-33. In the event of a tie as the result of a numeric comparative analysis, the referral list shall be composed of only the six (6) highest-ranking individuals, plus any individuals tying with those individuals. If a comparative analysis is not conducted because there are six (6) or fewer qualified applicants, the referral list shall be comprised of those applicants. (1/1/14)

Board Rule 4-34. In the case of filling multiple vacancies within the same class from the same eligible list, no more than the top six (6) candidates may be considered for each position as it is filled. If an appointing authority decides to fill multiple vacancies simultaneously, then the appointing authority may consider six (6) plus one (1) additional candidate for every additional position. (1/1/14)

- 4-35. Upon receipt of a request to fill a vacancy by an open-competitive or promotional method of appointment, a referral will be made from the appropriate eligible lists to the appointing authority. All those referred shall be notified of any contact information for the interview. (3/30/13)
- 4-36. If a non-numerical or combination of numerical and non-numerical comparative analysis is used, the referral list should be comprised of the top six (6) individuals plus any eligible veterans. If a numerical comparative analysis is used, the referral list shall only be composed of the six (6) highest ranking individuals. (3/30/13)
- 4-37. Appointing authorities or their designees shall consider or make a reasonable attempt to interview all applicants on the referral list in compliance with state and federal law. (3/30/13)

- 4-38. Any additional evaluation or assessment conducted after the referral shall be related to the job and administered to all applicants participating in the job interview process. (3/30/13)

**Removal from Employment Lists / Removal from Consideration**

- 4-39. Persons may be removed from employment lists for consideration by an appointing authority or agency HR office for these specific reasons:
- A. Reasons for mandatory removal from all employment lists or from consideration for all vacancies:
    - 1. Attempts to use bribery;
    - 2. Unauthorized access to examination information;
    - 3. False statements or attempts to practice fraud and deception during the selection process; or
    - 4. Existence of a written agreement between the individual and a department that the individual will not seek or accept work from the state.
  - B. Reasons for mandatory removal from a specific employment list or from consideration for the relevant vacancy:
    - 1. Failure to meet the minimum qualifications; or
    - 2. Existence of a written agreement between the individual and the department that the individual will not seek or accept work from the department which is removing the individual from the employment list.
  - C. Reasons for discretionary removal from one or more employment lists or from consideration for relevant vacancies:
    - 1. Violation of federal or state law or regulations that affect the ability to perform the job;
    - 2. No longer interested in or available for employment with the department or the state personnel system;
    - 3. Failure to appear for examination or participate in any aspect of the comparative analysis process;
    - 4. Failure to meet the conditions of employment such as physical requirements, background check, or others as set forth in the job announcement;
    - 5. Failure to respond to a referral within the specified time frame as communicated to the individuals referred, or to complete any portion of the selection process;
    - 6. Failure to be appointed after at least three referrals and interviews for vacancies with the same appointing authority, who is removing the person from the employment list, within an eighteen (18) month period;
    - 7. Documented failure to demonstrate proficiency in a required job-related competency set forth in the job announcement;

8. Documentation of unsatisfactory performance indicating an inability to perform in an area directly related to the job;
9. Appointment to a position in the class for which a list was established; or
10. Refusal of an appointment or condition(s) of employment previously indicated as acceptable. (1/1/14)

### Employment Status

Board Rule 4-40. Probationary service applies to appointments to permanent positions of:

- A. Employees who have not been previously employed within the state personnel system;
- B. At the discretion of the appointing authority, any reinstated former certified employees. (3/30/13)

Board Rule 4-41. The probationary service period shall not exceed 12 working months except as provided in Chapter 5, Time Off, or when there is a selection appeal pending. If the probationary employee separates from employment for any period of time, a new service date is required based on the date of rehire. (3/30/13)

- A. Probationary employees do not have a right to a pre-disciplinary meeting, to a mandatory hearing to review discipline for unsatisfactory performance, to be granted a period of time to improve performance, to be placed on a reemployment list, or to the privilege of reinstatement. However, probationary employees may petition the Board for a discretionary hearing on non-disciplinary matters.

Board Rule 4-42. Trial Service applies to appointments to permanent positions as follows:

- A. At the discretion of the appointing authority:
  1. A current certified employee who voluntarily transfers to a position within the same class;
  2. A current certified employee or reemployment applicant who transfers to a position in a different class with the same pay range maximum;
- B. A current certified employee or a reemployment applicant who promotes; and
- C. Any reinstated applicant unless the appointing authority requires a probationary period. (1/01/15)

Board Rule 4-43. The trial service period shall not exceed six working months, except as provided in Chapter 5, Time Off, or when there is a selection appeal pending. An employee who fails to perform satisfactorily during trial service shall revert to an existing vacancy in the previously certified class in the current department with no right to a hearing or, if there is no existing vacancy in the previously certified class in the current department, shall be accorded any retention rights to which the employee may be entitled under § 24-50-124, C.R.S. and/or Board Rule. The appointing authority has discretion to administer corrective or disciplinary action instead of reversion. (3/30/13)

Board Rule 4-44. The following applicants or employees retain their certified status when appointed to a new class or position:

- A. A current certified employee who demotes;
- B. A reemployment applicant who is appointed to a position within the same class;
- C. A current certified employee who voluntarily transfers to a position within the same class remains certified unless the appointing authority requires a trial service period
- D. A current certified employee or a reemployment applicant who voluntarily transfers to a different class with the same pay range maximum remains certified unless the appointing authority requires a trial service period;
- E. A current certified employee who involuntarily transfers to a position within the same class or a position within a different class with the same pay range maximum. (3/30/13)

Board Rule 4-45. Early certification is not allowed if a selection appeal is pending. (3/30/13)

Board Rule 4-46. When accepting a state position outside the state personnel system at the request of an elected or appointed state official, a certified employee is subject to the provisions of § 24-50-137, C.R.S. (3/30/13)

4-47. A temporary appointment refers to a qualified person who is appointed to a position or positions for a period not to exceed nine (9) months in any twelve (12) month period. The nine (9) month limitation shall be inclusive of all temporary appointments and departments. Temporary appointments include appointments to temporary positions, conditional, provisional and substitute appointments. (3/30/13)

4-48. All temporary positions shall be in the Temporary Aide class. Temporary employees are employed at will and do not have the rights and benefits provided to permanent employees, except those mandated by law and pay range minimum. Effective December 31, 1998, no credit is provided for a temporary position when an employee accepts a permanent position in the same class without a break in service.

- A. When the services for the relevant position are permanent and full-time, the position shall not be filled through a succession of temporary appointments.
- B. When services are seasonal or annually recurring, department heads should consider creating a permanent part-time position, including analysis of potential partnering with other departments in the same geographic location, as provided in Chapter 10, Personal Services Contracts. However, either a permanent part-time or temporary position may be used. (3/30/13)

Board Rule 4-49. A person in conditional status does not have a break in service as a result of having a conditional appointment. If the employee is subsequently appointed, to the position to which they were conditionally appointed, from a list, the trial service period begins on the date of the conditional appointment. If not subsequently appointed to the position, the employee reverts to an existing vacancy in the certified class in the current department. If no vacancy exists, layoff provisions apply. (3/30/13)

Board Rule 4-50. If a person with provisional status is subsequently appointed, to the position to which they were provisionally appointed, from a list, the probationary period begins on the date of the appointment from the referral list. Provisional employees do not have the rights and benefits provided to classified employees within the state personnel system, except those mandated by law and pay range minimum. (3/30/13)

Board Rule 4-51. A substitute appointment may only be made to perform the duties of a filled position during a leave or for training purposes. This appointment shall not exceed nine months in a twelve (12) month period unless transfer, demotion, or examination fills it. Layoff provisions do not apply and a certified employee is returned to a position in the former class. (3/30/13)

## Chapter 5 Time Off

Authority for rules promulgated in Chapter 5, Time Off, is found in State of Colorado Constitution Article XII, Section 13, The Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Family Care Act (FCA), Uniformed Services Employment and Reemployment Rights Act (USERRA), The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), Healthy Families and Workplace Act, the Public Health Emergency Whistleblower Act and 26 U.S.C. 63, State of Colorado Revised Statutes (C.R.S.) §§ 1-6-115, 1-6-122, 1-7-102, 8-40-101, 14-2-101, 14-15-103, 24-11-101, 24-11-112, 24-18-102, 24-33.5-825, 24-50-104, 24-50-109.5, 24-50-401, 28-1-104, 28-3-601, 28-6-602, 28-3-607, 28-3-609, and 28-3-610. (01/01/2021)

### General Principles

- 5-1. Employees are required to work their established work schedule unless on approved leave. Employees are responsible for requesting leave as far in advance as possible. The leave request shall provide sufficient information to determine the type of leave. (5/1/10)
  - A. The appointing authority shall respect the employee's privacy rights when requesting adequate information to determine the appropriate type of leave. (02/2017)
  - B. Appointing authorities are responsible for approving all leave requests and for determining the type of leave granted, subject to these rules and any additional departmental leave procedures. Departmental procedures shall be provided to employees. (02/2017)
  - C. Except for paid sick leave or public health emergency leave, use of any other leave that is not approved by the appointing authority may result in the denial of paid leave and/or corrective or disciplinary action. (01/01/2021)
  - D. Mandates to maintain a minimum balance of sick or annual leave (or a combination of both) are not permitted except under a leave sharing program or a corrective or disciplinary action. (02/2017)
    1. Paid sick leave or public health emergency leave cannot be counted as an absence that may lead to corrective or disciplinary action against an employee, unless the employee uses the leave for purposes other than the allowable reason. (01/01/2021)
- 5-2. Paid leave is to be exhausted before an employee is placed on unpaid leave, unless the reason for leave does not qualify for the type of leave available, or during a mandatory or voluntary furlough. (02/2017)
- 5-3. Departments shall keep accurate leave records in compliance with rule and law and be prepared to report the use of any type of leave when requested by the Director. (5/1/10)

### Accrued Paid Leave

- 5-4. Annual leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may establish periods when annual leave will not be allowed, or shall be taken, based on business necessity. These periods cannot create a situation where the employee does not have a reasonable opportunity to use requested leave that will be subject to forfeiture. If the department cancels approved leave that results in forfeiture, the forfeited hours shall be paid before the end of the fiscal year. (5/1/10)

- A. Due to the declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, if annual leave was denied, cancelled or the employee was not given reasonable opportunity to use the requested annual leave, resulting in annual leave being subject to forfeiture under rule, up to eighty (80) hours of leave over the maximum accrual allotment may be carried over to the next fiscal year in lieu of payment. The over accrued annual leave amount (up to eighty (80) hours) will roll over to the next fiscal year on July 1 and will be available to the employee to use. This amount will not carry over for a second fiscal year. Any annual leave hours over the maximum accrual amount not carried over in this Rule 5-4.(A) and subject to forfeiture shall be paid out to the employee before the end of the fiscal year. (08/01/2020)
- 5-5. Sick leave is for health reasons only, including mental or physical illness, injury, a health condition, diagnostic and preventative examinations, treatment, and recovery. Accrued sick leave may be used for the health needs of:
- A. The employee or the employee's family members (related by blood, adoption, marriage, or civil union) including a child to whom the employee stands in loco parentis or a person who stood in loco parentis to the employee when the employee was a minor, domestic partners, in-laws, step relatives and for a person for whom the employee is responsible for providing or arranging health or safety-related care. Special consideration will also be given to any other person whose association with the employee is similar to a family member. (01/01/2021)
- B. An injured military service member as established under Rule 5-20 (F), legal dependent, or a person in the household for whom the employee is the primary caregiver. (04/01/2020)
- C. Appointing authorities may use discretion to send employees home for an illness or injury that impacts the employee's ability to perform the job or the safety of others.
1. Sick leave shall be charged first;
  2. Annual leave shall be charged if sick leave is exhausted; then
  3. Unpaid leave if both annual and sick leave are exhausted. (01/01/2021)
- D. Employees shall provide the State's authorized form (or other official document containing the same information) from a health care provider for an absence of more than three (3) consecutive full working days for any health reason or the use of sick leave shall be denied. Appointing authorities have the discretion to require the State's authorized form (or other official document containing the same information) for absences of less than three (3) days when the appointing authority has a reasonable basis for suspecting abuse of sick leave. (02/2017)
1. The completed official form or document shall be returned within fifteen (15) days from the appointing authority's request. (02/2017)
  2. Failure to provide the State's authorized form (or other official document containing the same information) may result in corrective/disciplinary action. Appointing authorities have the discretion to approve other forms of leave if sick leave is denied. (02/2017)

- E. When an employee or employee's family member is a victim of domestic abuse, stalking, sexual assault, or any other crime related to domestic violence and needs to seek medical attention, mental health care or other counseling, or victim services including legal services or relocation. (01/01/2021)

**Exhaustion of Leave and Administrative Discharge**

- 5-6. If an employee has exhausted all credited paid leave and is unable to return to work, unpaid leave may be granted or the employee may be administratively discharged by written notice following a good faith effort to communicate with the employee. Administrative discharge applies only to exhaustion of leave. (11/1/2019)
  - A. The notice of administrative discharge shall inform the employee of appeal rights and the need to contact the employee's retirement plan on eligibility for retirement.
  - B. An employee cannot be administratively discharged if FML, state family medical leave, or short-term disability leave (includes the thirty (30) day waiting period) apply, or if the employee is a qualified individual with a disability under the ADA who can reasonably be accommodated without undue hardship. (11/1/2019)
  - C. A certified employee who has been discharged under this rule and subsequently recovers has reinstatement privileges.

5-7. Table (08/01/2020)

<b>Monthly Leave Earning, Accrual, Payout, and Restoration for Permanent Employees</b>							
<b>Annual Leave</b>				<b>Sick Leave****</b>			
<b>Years of Service*</b>	<b>Hrs. / Mon.</b>	<b>Max. Accrual**</b>	<b>Payout</b>	<b>Hrs./Mon.</b>	<b>Max. Accrual***</b>	<b>Restoration</b>	<b>Payout</b>
Years 1 - 5 (01 - 60 Months)	8	192 hours	Upon termination or death, unused leave is paid out up to the maximum accrual rate.	6.66	360 hours	Previously accrued sick leave up to three hundred and sixty (360) hours is restored when eligible for reinstatement or reemployment.	Upon death or if eligible to retire, one quarter (¼) of unused leave paid out to the maximum accrual rate. PERA's age and service requirements under the Defined Benefit plan are applied regardless of the plan actually enrolled in.
Years 6 - 10 (61 - 120 Months)	10	240 hours					
Years 11 - 15 (121 - 180 Months)	12	288 hours					
Year 16 or Greater (181 or more Months)	14	336 hours					
* Years of service is computed from the 1st calendar day of the month following the hire date; except if the employee began work on the 1st working day of a month, include that month in the count. Employees with prior permanent state service, in or out of the state personnel system, earn leave based on the total whole months of service, excluding temporary assignments.				*** Over-accrued sick leave up to eighty (80) hours is converted to annual leave each new fiscal year (July 1st) at a five to one (5:1) ratio (five (5) hours of sick converts to one (1) hour annual leave). An employee may have an individual maximum accrual that is greater than three hundred and sixty (360) hours if continuously employed in the state personnel system prior to 7/1/88. Maximum accrual for these employees is calculated by adding three hundred and sixty (360) hours to the leave balance on 6/30/88.			
** Over-accrued amounts are forfeited at the beginning of the new fiscal year (July 1st) except when Rule 5-4. A. is applicable.							
**** During the declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, sick leave balances may go negative up to forty (40) hours once all accrued sick, annual leave, and compensatory time is exhausted. Subsequent sick leave accruals will be credited to the negative balance. If an employee separates before the negative balance is recovered, it will be deducted from their final paycheck.							

<b>General Provisions</b>
<p>Employees shall be at work or on paid leave to earn monthly leave. Leave is credited on the last day of the month in which it is earned and is available for use on the first day of the next month, subject to any limitations elsewhere in Chapter 5, Time Off. A terminating employee shall be compensated for annual leave earned through the last day of employment.</p> <p>Part-time employees who work regular, non-fluctuating schedules earn leave on a prorated basis based on the percentage of the regular appointment, rounded to the nearest one, one hundredth (1/100) of an hour. Leave for part-time employees who work irregular, fluctuating schedules and full-time employees who work or are on paid leave less than a full month is calculated by dividing the number of hours paid by the number of work hours in the monthly pay period. The percentage is then multiplied by the employee's leave earning rate to derive the leave earned. Overtime hours are not included in leave calculations.</p> <p>Leave payouts at separation are calculated using the annualized hourly rate of pay (annual salary divided by two thousand eighty (2080) hours for full-time employees), and employees are only eligible for the sick leave payout one (1) time - initial eligibility for retirement.</p> <p>Forfeiture of leave as a disciplinary action or a condition of promotion, demotion, or transfer is not allowed.</p> <p>Borrowing against any leave that may be earned in the future or "buying back" leave already used is not allowed, except during a declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, as indicated above.</p> <p>Use of annual leave cannot be required for an employee being laid off.</p> <p>Make Whole: When an employee is receiving workers' compensation payments, accrued paid leave is used to make the employee's salary whole in an amount that is closest to the difference between the temporary compensation payment and the employee's gross base pay, excluding any pay differentials. Leave earning is not prorated when an employee is being made whole.</p> <p>Short-Term Disability: Employees are required to use accrued paid leave during the thirty (30) day waiting period for short-term disability benefits, including the use of accrued annual leave and/or compensatory time once accrued sick leave has been exhausted. When an employee is receiving short-term disability payments, the employee may choose to use accrued paid leave to make their salary whole in an amount that is closest to the difference between the short-term disability benefit payment and the employee's gross base pay, excluding any pay differentials. Employees who elect to be made whole will use accrued sick leave first, then annual leave or compensatory time as available. Employees shall not use negative sick leave to be made whole. Leave earning is not prorated when an employee is being made whole.</p>

5-7. A. Table (01/01/2021)

<b>Factor Rate Earning, Accrual, Payout, and Restoration for Temporary Employees</b>			
<b>Sick Leave</b>			
<b>Hourly Accrual / Biweekly Pay</b>	<b>Cap*</b>	<b>Restoration</b>	<b>Payout</b>
.033/hour 30 hours x .033 = 1 hour  Biweekly Pay Period 80 hours x .033 = 2.64 hours	48 Hours	Previously accrued sick leave up to forty-eight (48) hours is restored when eligible for temporary rehire or hired permanently.	Not applicable.
* Up to a cap of 48 hours of paid leave may be accrued in the fiscal year. Leave is no longer accrued once the cap is reached.			
<b>General Provisions:</b> Temporary employees shall be at work or on paid leave to earn paid sick leave. Leave is credited on the last day of the biweekly pay period in which it is earned and is available for use on the first day of the following biweekly pay period. Sick leave may be requested and used, subject to the general principles, sick leave, Family Medical Leave Act, and public health emergency leave rules of this Chapter 5, Time Off.			

### **Leave Sharing**

- 5-8. Leave sharing allows for the transfer of annual leave between permanent state employees for an unforeseeable life-altering event beyond the employee's control, and is subject to the discretionary approval of a department head. Departments shall develop and communicate their programs prior to use, including criteria for qualifying events. The authority to approve leave sharing shall not be delegated below the department head without advance written approval of the Director. (02/2017)
- 5-9. Employees shall have at least one (1) year of state service to be eligible. Leave sharing is not an entitlement even if the individual case is qualified. Donated leave is not part of the leave payout upon termination or death. (5/1/10)
- A. Donated leave is allowed for a qualifying event for the employee or the employee's immediate family member as defined under Rule 5-5. In order to use donated leave, the employee shall first exhaust all applicable paid leave and compensatory time and shall not be receiving short-term disability or long-term disability benefit payments. If all leave is exhausted, donated leave may be used to cover the leave necessary during the thirty (30) day waiting period for short-term disability benefit payments. The transfer of donated leave between departments is allowed only with the approval of both department heads. (02/2017)

### **Holiday Leave**

- 5-10. Permanent full-time employees employed by the state when the holiday is observed are granted eight (8) hours of paid holiday leave (prorated for permanent part-time employees) to observe each legal holiday designated by law, the Governor, or the President. Appointing authorities may designate alternative holiday schedules for the fiscal year. If a holiday occurs when an employee is on short or long-term disability and is being paid for the disability benefit, the employee will be paid through those benefits and not be granted eight (8) hours of holiday leave. (04/01/2020)
- A. Department heads have the discretion to grant employee requests to observe César Chávez day, March 31, in lieu of another holiday in the same fiscal year. The department shall be open and at least minimally operational for both days and the employee shall have work to perform.
- B. Each department shall establish an equitable and consistent policy to ensure that all permanent employees are granted their full complement of holidays. (02/2017)

### **Other Employer-Provided Leaves**

- 5-11. The types of leave in this section do not accrue, carry over, or pay out. (5/1/10)
- 5-12. Bereavement leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may provide up to forty (40) hours (prorated for part-time work or unpaid leave in the month) of paid leave to permanent employees for the death of a family member or other person. Employees are responsible for requesting the amount of leave needed. Documentation may be required when deemed necessary by the appointing authority. (02/2017)

- 5-13. Military leave provides up to one hundred twenty (120) hours in a fiscal year to permanent employees who are members of the National Guard, military reserves, or National Disaster Medical Service to attend the annual encampment or equivalent training or who are called to active service, including declared emergencies. Unpaid leave is granted in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) after exhaustion of the one hundred twenty (120) hours. The employee may request the use of annual leave before being placed on unpaid leave. (04/01/2020)
- A. Notice may be written or verbal and should be in advance of the leave unless unreasonable or precluded by military necessity. Required documentation shall be submitted in advance of the leave or upon the return to work in the form of military orders, estimates of military entitlements, military leave earning statements, correspondence from a commanding officer, or other forms that may be verified. (01/01/2021)
- B. In the case of a state emergency, the employee shall return upon release from active duty. In the case of federal service, the employee shall notify the appointing authority of the intent to return to work, return to work, or may need to apply to return, and is entitled to the same position or an equivalent position, including the same pay, benefits, location, work schedule, and other working conditions. This leave is not a break in service. (02/2017)
- 5-14. Jury leave provides paid leave to all employees; however, temporary employees receive paid leave for a maximum of three (3) days of jury leave. Jury pay is not turned over to the department. Proof may be required. (02/2017)
- 5-15. Administrative leave may be used to grant paid time when the appointing authority wishes to release employees from their official duties for the good of the state. In determining what is for the good of the state, an appointing authority shall consider prudent use of taxpayer and personal services dollars and the business needs of the department. (02/2017)
- A. Activities performed in an official employment capacity, including job-related training and meetings, voluntary training, conferences, participation in hearings or settlement conferences at the direction of the Board or Director, and job-related testimony in court or official government hearings required by an appointing authority or subpoena are work time and not administrative leave. Administrative leave is not intended to be a substitute for corrective or disciplinary action or other benefits and leave. (02/2017)
- B. Administrative leave may be granted for the following: (02/2017)
1. Up to five (5) days for local or fifteen (15) days for national emergencies per fiscal year to employees who are certified disaster service volunteers of the American Red Cross. (02/2017)
  2. One (1) period of administrative leave for the initial call up to active military service in the war against terrorism of which shall not exceed ninety (90) days and applies after exhaustion of paid military leave. Administrative leave is only used to make up the difference between the employee's base salary (excluding premiums) and total gross military pay and allowances. The employee shall furnish proof of military pay and allowances. This leave does not apply to regular military obligations such as the annual encampment and training. (02/2017)
  3. Volunteering in community or school activities. A department shall adopt and communicate a policy regarding the amount of leave available, employee eligibility, and process for requesting and approving leave. (04/01/2020)

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4. Employee recognition for special accomplishments or contributions in accordance with the department's established incentive plan. (02/2017)
- C. Administrative leave shall be granted for the following: (02/2017)
1. Two (2) hours to participate in general elections if the employee does not have three (3) hours of unscheduled work time during the hours the polls are open. (02/2017)
  2. Up to two (2) days per fiscal year for organ, tissue, or bone donation for transplants. (02/2017)
  3. To serve as an uncompensated election judge unless a supervisor determines that the employee's attendance on Election Day is essential. The employee shall provide evidence of service. (02/2017)
  4. Up to fifteen (15) days in a fiscal year when qualified volunteers or members of the Civil Air Patrol are directed to serve during a declared local disaster, provided the employee returns the next scheduled workday once relieved from the volunteer service. (02/2017)
- D. Administrative leave that exceeds twenty (20) consecutive working days shall be reported to the department head and the Director. (01/01/2021)
- 5-16. Paid family medical leave (PFML) provides permanent full-time employees up to eighty (80) hours of paid leave (prorated for permanent part-time employees) per rolling twelve (12) month period when employees are eligible and qualify for unpaid, job protected Family Medical Leave (FML). PFML supplements and runs concurrently with FML and the short-term disability waiting period. The exception is the qualifying reasons for victim protection leave as prescribed in C. of this rule. (01/01/2021)
- A. PFML shall be used before accrued paid leave except when an employee elects to use PFML to bond with their newborn child or for a newly placed adopted or foster child within twelve (12) months after the birth or placement as allowed under the Family Medical Leave Act (FMLA).
  - B. Employees who work in the same department or division as his or her spouse, partners in a civil union or domestic partnership are each entitled to PFML when they are eligible and qualify for FML.
  - C. PFML may be used when an employee or an employee's family member is a victim of domestic abuse, stalking, sexual assault, or any other crime related to domestic violence and needs to seek medical attention, mental health care or other counseling, or victim services including legal services or relocation.
    1. An employee must meet the eligibility requirements for FML per rules 5-20 and 5-21, to qualify for PFML for domestic violence related reasons. However, the use of PFML for domestic violence related reasons does not automatically qualify an employee for FML.
    2. All information related to the leave shall be confidential and maintained in separate confidential files with limited access.
  - D. Injury leave, leave under the make whole policy for workers compensation, and emergency public health leave are excluded from PFML.
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- E. Retaliation against an employee is prohibited; however, this rule does not prohibit adverse employment action that would have otherwise occurred had the leave not been requested or used.
- 5-17. Unpaid leave may be approved by the appointing authority unless otherwise prohibited. The appointing authority may also place an employee on unpaid leave for unauthorized absences and may consider corrective and/or disciplinary action. Probationary and trial service periods are extended by the number of days on unpaid leave and may be extended for periods of paid leave. The amount of unpaid leave for employees paid on a monthly pay cycle is calculated based on the monthly salary multiplied by the number of unpaid leave hours divided by the number of hours in the pay period. The amount of unpaid leave for nonexempt employees paid on a biweekly pay cycle is calculated based on the hourly pay rate multiplied by the number of unpaid leave hours. The amount of unpaid leave for exempt employees paid on a biweekly pay cycle is calculated based on the biweekly salary multiplied by the number of unpaid leave hours divided by the number of hours in the pay period. (11/1/2019)
- A. Short-term disability (STD) leave is a type of unpaid leave of up to six (6) months while either state or PERA STD benefit payments are being made. To be eligible for this leave, employees shall have one (1) year of service and an application for the STD benefit shall be submitted within thirty (30) days of the beginning of the absence. The employee shall also notify the department at the same time that a benefit application is submitted to the insurance provider. (08/01/2020)
- B. Voluntary furlough is unpaid job protection granted for up to seventy two (72) workdays per fiscal year when a department head declares a budget deficit in personal services. The employee may request such absence to avoid more serious position reduction or abolishment. Employees earn sick and annual leave and continue to receive service credit as if the furlough had not occurred.
- C. Repealed. (01/01/2021)
- D. State family medical leave is unpaid job protection granted for up to forty (40) hours subsequent to FML. To be eligible for this leave, the employee shall be eligible for FML, see Rule 5-20. Employees do not need to apply for state family medical leave separately.
- 5-18. Parental Academic leave. Departments may provide up to eighteen (18) hours (prorated for part-time) in an academic year for parents or legal guardians to participate in academic-related activities. A department shall adopt and communicate a policy on whether the leave will be unpaid or paid, the amount and type of paid leave, and specifically the substitution of annual leave or use of administrative leave. (02/2017)

#### **Family/Medical Leave (FML)**

- 5-19. The state is considered a single employer under the Family and Medical Leave Act (FMLA) and complies with its requirements, the Family Care Act (FCA), and the following rules for all employees in the state personnel system. Family/medical leave cannot be waived. (02/2017)
- A. The FCA provides unpaid leave to eligible employees to care for their partners in a civil union or domestic partnership who have a serious health condition and is administered consistent with FML. (02/2017)
- 5-20. FML is granted to eligible employees for the following conditions: (02/2017)
- A. Birth and care of a child and shall be completed within one (1) year of the birth; (02/2017)

- B. Placement and care of an adopted or foster child and shall be completed within one (1) year of the placement; (02/2017)
  - C. Serious health condition of an employee's parent, child under the age of eighteen (18), an adult child who is disabled at the time of leave, spouse, partner in a civil union, or registered domestic partner for physical care or psychological comfort; see Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions, for the definition of serious health condition and ADA definition for disability; (02/2017)
  - D. Employee's own serious health condition; (02/2017)
  - E. Active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or (02/2017)
  - F. Military caregiver leave for a parent, child, spouse, or next of kin who suffered a serious injury or illness in the line of duty while on active duty. Military caregiver leave includes time for veterans who are receiving treatment within five (5) years of the beginning of that treatment. (02/2017)
- 5-21. To be eligible for FML, an employee shall have twelve (12) months of total state service as of the date leave will begin, regardless of employee type. A state temporary employee shall also have worked one thousand two hundred fifty (1250) hours within the twelve (12) months prior to the date leave will begin. Time worked includes overtime hours. (11/1/2019)
- A. Full-time employees will be granted up to four hundred eighty (480) hours of FML per rolling twelve (12) month period. Once eligible for FML, the employee is also eligible for up to an additional forty (40) hours of state family medical leave. The amount of leave is determined by the difference of five hundred twenty (520) hours and any FML or state family medical leave taken in the previous twelve (12) month period and is calculated from the date of the most recent leave. The amount of leave is prorated for part-time employees based on the regular appointment or schedule. Any extension of leave beyond the amount to which the employee is entitled is not FML, or state family medical leave, see Rule 5-1 B. (11/1/2019)
- 5-22. Military caregiver leave is a one (1) time entitlement of up to one thousand forty (1040) hours (prorated for part-time) in a single twelve (12) month period starting on the date the leave begins. While intermittent leave is permitted, it does not extend beyond the twelve (12) month period. In addition, the combined total for military caregiver, state family medical leave, and all other types of FML shall not exceed one thousand forty (1040) hours. (11/1/2019)
- 5-23. All other types of leave, compensatory time, and make whole payments under short-term disability and workers' compensation run concurrently with FML and state family medical leave and do not extend the time to which the employee is entitled. The employee shall use all accrued paid leave subject to the conditions for use of such leave before being placed on unpaid leave for the remainder of FML and state family medical leave. An employee on FML or state family medical leave cannot be required to accept a temporary "modified duty" assignment even though workers' compensation benefits may be affected. (08/01/2020)
- 5-24. Unpaid leave rules apply to any unpaid FML and state family medical leave except the state continues to pay its portion of insurance premiums. An employee's condition that also qualifies for short-term disability benefits shall comply with the requirements of that plan. (11/1/2019)

- 5-25. Employer Requirements. The appointing authority, human resources director, or FMLA coordinator shall designate and notify the employee whether requested leave qualifies as FML based on the information provided by the employee, regardless of the employee's desires. Departments shall follow all written directives and guidance on designation and notice requirements. (02/2017)
- 5-26. Employee Requirements. Written notice of the need for leave shall be provided by the employee thirty (30) days in advance. If an employee becomes aware of the need for leave in less than thirty (30) days in advance, the employee shall provide notice either the same day or the next business day. Failure to provide timely notice when the need for leave is foreseeable, and when there is no reasonable excuse, may delay the start of FML for up to thirty (30) days after notice is received as long as it is designated as FML in a timely manner. Advance notice is not required in the case of a medical emergency. In such a case, an adult family member or other responsible party may give notice, by any means, if the employee is unable to do so personally. (5/1/10)
- 5-27. The employee shall consult with the appointing authority to: establish a mutually satisfactory schedule for intermittent treatments and a periodic check-in schedule; report a change in circumstances; make return to work arrangements, etc. (5/1/10)
- 5-28. Employees shall provide proper medical certification, including additional medical certificates and fitness-to-return certificates as prescribed in Rules 5-29 through 5-32. If the employee does not provide the required initial and additional medical certificates, the leave will not qualify as FML and shall be denied. (02/2017)

### **Medical Certificates**

- 5-29. Employees shall provide the State's authorized medical certification form (or other official document containing the same information) when initiating an FML leave request. Appointing authorities have the discretion to require periodic medical certification to determine if FML continues to apply or when the appointing authority has a reasonable basis for suspecting leave abuse. Medical certification for FML may be required for the first leave request in an employee's rolling twelve (12) month period. Additional medical certification may be required every thirty (30) days or the time period established in the initial certification, whichever is longer, unless circumstances change or new information is received. (02/2017)
- A. The medical certification shall be completed by a health care provider as defined in federal law. The completed medical certification shall be returned within fifteen (15) days from the appointing authority's request. If it is not practical under the particular circumstances to provide the requested medical certification within fifteen (15) days despite the employee's diligent, good faith efforts, the employee shall provide the medical certification within a reasonable period of time involved, but no later than thirty (30) calendar days after the initial date the appointing authority requested such medical certification. (02/2017)
- B. Failure to provide the medical certification shall result in denial of leave and possible corrective/disciplinary action. (7/1/13)
- 5-30. When incomplete medical certification is submitted, the employee shall be allowed seven (7) days to obtain complete information, absent reasonable extenuating circumstances. (7/1/13)
- A. Following receipt of the information or the seven (7) days from which it was requested, the department's human resources director or FMLA coordinator may, with the employee's written permission, contact the health care provider for purposes only of clarification and authentication of the medical certification. (02/2017)

- 5-31. When medical certification is submitted to demonstrate that the leave is FML-qualifying, the department has the right to request a second opinion on the initial certification. If the first and second opinion conflict, the department may require a binding third opinion by a mutually agreed upon health care provider. Under both circumstances the cost is paid by the department. Second and third opinions are not permitted on additional certification for recertification purposes. (02/2017)
- 5-32. If an absence is more than thirty (30) days for the employee's own condition, the employee shall provide a fitness-to-return certificate. The fitness-to-return certificate may be required for absences of thirty (30) days or less based on the nature of the condition in relation to the employee's job. The department may also require a fitness-to-return certificate from employees taking intermittent FML every thirty (30) days if there are reasonable safety concerns regarding the employee's ability to perform his or her job duties. (02/2017)
- A. When requested, employees shall present a completed fitness-to-return certificate before they will be allowed to return to work. Failure to provide a fitness-to-return certificate as instructed could result in delay of return, a requirement for new medical certification, or administrative discharge as defined in Rule 5-6. (7/1/13)
- B. When an incomplete fitness-to-return certification is submitted, the employee shall be allowed seven (7) days to obtain complete information, absent reasonable extenuating circumstances. Following receipt of the information or the seven (7) days from which it was requested, the department's human resources director or FMLA coordinator may, with the employee's written permission, contact the health care provider for purposes only of clarification and authentication of the fitness-to-return certification. (02/2017)
- 5-33. Benefits coverage continues during FML and state family medical leave. If the employee is on paid FML or state family medical leave, premiums will be paid through normal payroll deduction. If the FML or state family medical leave is unpaid, the employee shall pay the employee share of premiums as prescribed by benefits and payroll procedures. (11/1/2019)
- 5-34. Upon return to work, the employee is restored to the same, or an equivalent, position, including the same pay, benefits, location, work schedule, and other working conditions. If the employee is no longer qualified to perform the job (e.g., unable to renew an expired license), the employee shall be given an opportunity to fulfill the requirement. (11/1/2019)
- A. If the employee is no longer able to perform the essential functions of the job due to a continuing or new serious health condition, the employee does not have restoration rights under FML or state family medical leave, and the appointing authority may separate the employee pursuant to Rule 5-6 subject to any applicable ADA provisions. (11/1/2019)
- B. The employee does not have restoration rights if the employment would not have otherwise continued had the FML or state family medical leave not been taken, e.g., discharge due to performance, layoff, or the end of the appointment. (11/1/2019)
- 5-35. FML and state family medical leave do not prohibit adverse action that would have otherwise occurred had the leave not been taken. (11/1/2019)
- 5-36. The use of FML or state family medical leave cannot be considered in evaluating performance. If the performance plan includes an attendance factor, any time the employee was on FML or state family medical leave cannot be considered. (11/1/19)

- 5-37. Records. Federal law requires that specified records be kept for all employees taking FML. These records shall be kept for three (3) years. Any medical information shall be maintained in a separate confidential medical file in accordance with ADA requirements and Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions. (02/2017)

### **Injury Leave**

- 5-38. Injury Leave. A permanent employee who suffers an injury or illness that is compensable under the Workers' Compensation Act shall be granted injury leave up to ninety (90) occurrences (whole day increments regardless of the actual hours absent during a day) with full pay if the temporary compensation is assigned or endorsed to the employing department. (5/1/10)
- A. If after ninety (90) occurrences of injury leave an employee still is unable to work, the employee is placed on leave under the "make whole" policy. The employee will receive temporary disability benefits pursuant to the Colorado Workers' Compensation Act. The employing department will make up the difference between the temporary disability benefits and the employee's full pay using accrued sick leave first, then annual leave or compensatory time as available. Once all paid leave is exhausted, employees may be given unpaid leave. Workers' compensation payments after termination of injury leave shall be made to the employee as required by law. (02/2017)
  - B. The appointing authority may invoke Rule 5-6 if the employee is unable to return to work after exhausting all accrued paid leave and applicable job protection. Termination of service under that rule will not affect continuation of payments under the Workers' Compensation Act.
  - C. If the employee's temporary compensation payment is reduced because the injury or occupational disease was caused by willful misconduct or violation of rules or regulations, the employee shall not be entitled to or granted injury leave. Any absence shall be charged using sick leave first, then annual leave or compensatory time on a "make whole basis" or, at the appointing authority's discretion, unpaid leave may be granted and the temporary compensation payments shall be made to the employee. (02/2017)
  - D. The first three (3) regular working days missed as a result of a compensable work injury will be charged to the employee's sick leave, then annual leave or compensatory time, as available. Injury leave will only be granted once an eligible employee misses more than three (3) regular working days. Sick or annual leave for the first three (3) regular working days will be restored if the employee is off work for more than two (2) weeks. (02/2017)
  - E. If a holiday occurs while an employee is on injury leave, the employee receives the holiday and the day is not counted as an injury leave occurrence.

### **Disaster and Public Health Emergency**

- 5-39. Public health emergency leave, as defined in the Healthy Families Workplaces Act, shall be granted to a temporary or permanent employee for the cause of a disaster or public emergency declared by the Governor or a federal, state, or local public health agency. (01/01/2021)
- A. Employees are eligible for up to eighty (80) hours of paid leave (prorated for part-time) during the entirety of a public health emergency even if such public health emergency is amended, extended, restated, or prolonged. Public health emergency leave may be used for the following reasons:
    - 1. Needing to self-isolate because the employee is diagnosed or experiencing symptoms of the communicable illness;

2. Seeking or obtaining medical diagnosis, care or treatment, preventative care, or care of such illness;
  3. Being exposed to, or experiencing symptoms of, such illness;
  4. Being unable to work due to a health condition that may increase susceptibility or risk of such illness;
  5. Caring for a child or other family member for reasons 1, 2, or 3 above, or whose school, child care provider, or other care provider is either unavailable, closed, or providing remote instruction due to the public health emergency; or
  6. Closure of the temporary employee's work location, and work cannot be performed remotely. (01/01/2021)
- B. Permanent employees may receive administrative leave due to closure of work location caused by the disaster or public emergency of work location, and work cannot be performed remotely. (01/01/2021)
- C. Public health emergency leave may be used up to four (4) weeks after the suspension of the public health emergency. (01/01/2021)
- 5-40. During the declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, in the event that daycares, schools or other care services are closed, impacted employees shall first work with their supervisor to determine if working from home or a schedule adjustment will allow them to continue working. If these measures do not allow for the employee to continue to work, then employees may use any accrued leave to care for their family members, including but not limited to domestic partners, in-laws and step relatives. Special consideration will be given to any other person whose association with the employee is similar to that of a family member. (08/01/2020)

## Chapter 6 Performance

Authority for rules promulgated in Chapter 6, Performance, is found in the Colorado Constitution Art. XII §13 and §24-50-104, 24-50-125, and 27-90-111, C.R.S. Board rules are identified by cites beginning with "Board Rule".

### General Principles

Board Rule 6-1. Employees represent the state so they are required at all times to use their best efforts to perform assigned tasks promptly and efficiently, and to be courteous and impartial in dealing with those served. Employees may be rewarded based on their level of performance.

Board Rule 6-2. A certified employee shall be subject to corrective action before discipline unless the act is so flagrant or serious that immediate discipline is proper. The nature and severity of discipline depends upon the act committed. When appropriate, the appointing authority may proceed immediately to disciplinary action, up to and including immediate termination.

### Performance Management

Board Rule 6-3. Appointing authorities and designated raters are responsible for communicating the department's performance pay program and the performance expectations and standards, including an individual written performance plan, and for evaluating performance in a timely manner in accordance with rule.

6-4. The Director shall establish requirements governing the performance management system. These requirements shall be applied by all appointing authorities and designated raters, including any person employed by the state who supervises an employee. The performance management system does not apply to employees in the senior executive service or medical plan.

- A. A department's performance management program shall be approved by the Director before implementation.
- B. The department's performance management program must:
  - 1. Include the department's internal dispute resolution process and the Director's external dispute resolution process as outlined in Chapter 8, Resolution of Appeals and Disputes;
  - 2. Include a training plan for employees and raters detailing the department's performance management program. Training is mandatory for all raters;
  - 3. Include the statewide, uniform core competencies defined by the Director;
    - a. The department shall incorporate the statewide uniform core competencies into each individual performance management plan and evaluation.
    - b. The statewide, uniform core competencies cannot be disregarded in the final overall rating for each employee.
  - 4. Include the development of performance evaluation form(s) to be used for employees by the raters;
  - 5. Include the statewide uniform performance cycle as defined by the Director;

6. Include a planning meeting with the employee that shall occur by the date specified in the department's performance management program;
    - a. The department should allow for coaching and feedback throughout the performance cycle, but shall include at least one (1) documented progress review.
  7. Include performance rating levels and standard definitions published in written directives by the Director;
    - a. The department shall specify whether the performance evaluations are numerical, qualitative, or a combination that correlate to one of the Director's defined performance rating levels.
    - b. A department's performance management forms shall also contain the standard definitions.
    - c. Departments may further define the levels in relation to mission and operational needs providing that such expansion falls within these required definitions.
  8. Not establish a quota for the number of employees allowed to receive any of the performance ratings;
  9. Include a description of the department's review process to monitor the quality and consistency of performance ratings within the department before final overall ratings are provided to employees; and
  10. Develop an accountability component to ensure compliance with the department's performance management program.
    - a. Such programs shall specify the sanctions, including those required by these provisions and statute, to be imposed for any rater employed by the state who fails to complete the performance management plan or evaluation.
- C. All employees shall be evaluated, in writing, at least annually based on the past year's performance.
1. If an employee moves to a position under another appointing authority or department during a performance cycle, an interim overall evaluation shall be completed and delivered to the new appointing authority or department within thirty (30) days of the effective date of the move.
  2. No evaluation is required when an employee retires from employment in the state personnel system.
- D. Department heads shall provide any required or requested information pertaining to performance management to the Director by the specified deadline.

6-5. Designated raters shall be evaluated by their direct supervisor on their performance management and evaluation of employees. Absent extraordinary circumstances, failure to plan and evaluate in accordance with the department's established timelines results in a corrective action and ineligibility for merit pay. If the individual performance plan or evaluation is not completed within thirty (30) days of the corrective action, the designated rater shall be disciplinarily suspended in increments of one (1) workday following the pre-disciplinary meeting.

A. A reviewer shall sign the rater's evaluation of an employee. If the rater fails to complete an individual performance plan or evaluation, the reviewer is responsible for completion. If the reviewer fails to complete the plan or evaluation, the reviewer's supervisor is responsible, on up the chain of command until the plan or evaluation is completed as required. If a rating is not given, the overall evaluation shall be satisfactory until a final rating is completed.

Board Rule 6-6. Performance Improvement.

A. Performance Improvement Plans.

1. When appropriate, the department may issue a performance improvement plan to communicate performance concerns and expectations.
2. A performance improvement plan is not a corrective action.
3. A performance improvement plan shall establish a reasonable amount of time for the employee to improve.
4. If performance has not improved within the established amount of time in a performance improvement plan, the appointing authority may take other action as appropriate.

B. Needs Improvement or Unacceptable Performance Rating. Performance that needs improvement or is otherwise unacceptable as documented in the annual evaluation shall result in a performance improvement plan and/or a corrective action and a reasonable amount of time to improve, unless the employee is already under performance improvement, corrective or disciplinary action for the same performance matter. If needs improvement or unacceptable performance relates to a recurring performance issue that has resulted in a prior corrective action or disciplinary action, the appointing authority may take disciplinary action concurrently with issuing the annual evaluation. The appointing authority may proceed immediately to disciplinary action, up to and including immediate termination, if the act is so flagrant or serious that immediate discipline is proper.

### **Corrective and Disciplinary Actions**

Board Rule 6-7. An employee may only be corrected or disciplined once for a single incident but may be corrected or disciplined for each additional act of the same nature. Corrective and disciplinary actions can be issued concurrently.

Board Rule 6-8. Corrective Actions.

- A. The purpose of a corrective action is to correct performance issues or conduct. Corrective actions do not affect current base pay, status, or tenure.
- B. Corrective actions shall be in writing and include the following:

1. The performance issues or conduct that need improvement;
  2. The expectations the employee shall meet;
  3. If appropriate, a reasonable amount of time for the employee to improve the performance issues or conduct;
  4. The consequences for failing to correct the performance issues or conduct; and
  5. A statement that the employee may grieve the corrective action.
- C. A corrective action may also contain a statement that the corrective action will be removed from the official personnel records after a specified period of satisfactory compliance.
- D. A removed corrective action is not relevant in any subsequent personnel actions as to prior unsatisfactory performance or conduct, but may be relevant for other purposes such as proof of motive, opportunity, intent, knowledge, or absence of mistake.

Board Rule 6-9. Notice of the Rule 6-10 Meeting.

- A. The appointing authority shall provide written notice to the employee about a Rule 6-10 meeting as follows:
1. The notice shall be provided at least seven (7) days prior to the meeting;
  2. The notice shall contain the date, time, and location of the meeting;
  3. The notice shall inform the employee that the appointing authority is considering taking disciplinary action;
  4. The notice shall inform the employee of the alleged performance issues or conduct that may result in discipline;
  5. The notice shall inform the employee that the employee may present information during the meeting; and
  6. The notice shall inform the employee that a representative may accompany the employee to the meeting.
- B. When reasonable attempts to hold the Rule 6-10 meeting fail, the appointing authority shall provide written notice to the employee as follows:
1. The notice shall provide the employee general information about the alleged performance issues or conduct that prompted the appointing authority to consider taking disciplinary action; and
  2. The notice shall inform the employee that the employee may respond in writing within ten (10) days from delivery of the notice.
- C. If reasonable attempts to meet fail and if the employee does not respond to the notice sent pursuant to this rule, then the appointing authority may make a disciplinary decision without information from the employee.
- D. Proof of delivery of the notices under this Rule may be established by:

1. A dated return receipt from the United States Postal Service;
2. A dated return receipt from a commercial delivery service provider;
3. The employee's signature affixed to the notice;
4. An affidavit attesting hand-delivery; or
5. An affidavit attesting that the sender transmitted the Notice of the Rule 6-10 Meeting to a valid email address combined with a copy of the email.

**Board Rule 6-10. Rule 6-10 Meeting.**

- A. The appointing authority is responsible for deciding whether to take disciplinary action.
- B. This Rule only applies to certified state employees.
- C. When considering discipline, the appointing authority shall meet with the employee before making a final decision, unless the employee had previously filed an official complaint of improper conduct against the appointing authority. In the event that an official complaint has been raised, the department must delegate in writing the appointing authority to another person for the purposes of presiding over the Rule 6-10 meeting and making any resulting decision.
- D. During the Rule 6-10 meeting, the appointing authority shall:
  1. Disclose the alleged performance issues or conduct that may result in discipline;
  2. Disclose the source of the information about the alleged performance issues or conduct (unless prohibited by law); and
  3. Give the employee an opportunity to respond to the alleged performance issues or conduct.
- E. During the Rule 6-10 meeting, the appointing authority and employee are each allowed one (1) representative of their own choice. The appointing authority and the employee may agree in writing to allow more than one (1) representative.
- F. Statements during the Rule 6-10 meeting are not privileged.
- G. Both sides may record the Rule 6-10 meeting using an audio-recording device.
- H. The employee shall be allowed at least seven (7) days after the Rule 6-10 meeting to provide the appointing authority any additional information relating to the subjects discussed during the meeting.
- I. In deciding whether to take disciplinary action, the appointing authority shall consider all the information discussed during the Rule 6-10 meeting and any additional information provided by the employee.
- J. If agreed upon by the appointing authority and the employee, the Rule 6-10 meeting may be conducted using video-conferencing technology. Both sides may record a Rule 6-10 meeting that is conducted via video-conferencing.

Board Rule 6-11. Factors to Consider in Taking Discipline.

- A. The decision to take disciplinary action of a certified state employee shall be based upon:
  - 1. The nature, extent, seriousness, and effect of the performance issues or conduct;
  - 2. Type and frequency of prior unsatisfactory performance or conduct (including any prior performance improvement plans, corrective actions or disciplinary actions);
  - 3. The period of time since any prior unsatisfactory performance or conduct;
  - 4. Prior performance evaluations;
  - 5. Mitigating circumstances; and
  - 6. Information discussed during the Rule 6-10 meeting, including information presented by the employee.
- B. In considering any disciplinary action of an employee who has engaged in mistreatment, abuse, neglect, or exploitation against a vulnerable person, the appointing authority shall give weight to the safety of vulnerable persons over the interests of any other person. A vulnerable person shall be as defined in § 27-90-111(2)(e), C.R.S.
- C. In considering any disciplinary action of an employee for engaging in violent behavior or a threat of violent behavior against another person while on duty, the appointing authority shall give predominant weight to the safety of the other person over the interests of the employee.

Board Rule 6-12. Disciplinary Actions.

- A. Disciplinary actions are as follows: an adjustment of base pay to a lower rate in the pay grade; base pay below the grade minimum for a specified period not to exceed twelve (12) months; demotion; dismissal; and suspension without pay, subject to FLSA provisions. Administrative leave with pay during a period of investigation is not a disciplinary action.
- B. Reasons for discipline include, but are not limited to, the following:
  - 1. Failure to perform competently;
  - 2. Willful misconduct;
  - 3. Failure to comply with the Board Rules, Director's Procedures, department's rules and policies, state universal policies, or other departmental directives;
  - 4. A violation of any law that negatively impacts job performance;
  - 5. False statements or omissions of material facts during the application process for a state position;
  - 6. False statements or omissions of material facts during the course of employment;
  - 7. Violence or threats of violence;

- a. "Violence" means any act of physical, verbal, or psychological aggression. "Violence" includes destruction or abuse of property by an individual.
  - b. "Threat" may include a veiled, conditional or direct threat of violence in verbal, written, electronic, or gestural form, resulting in intimidation, harassment, harm, or endangerment to the safety of another person or property.
8. Mistreatment, abuse, neglect or exploitation of a person;
  9. Conviction of a felony or any other offense that involves moral turpitude; and
  10. Conviction of a Department of Human Services' employee of any of the offenses in § 27-90-111, C.R.S.
    - a. Conviction means a verdict of guilty or a plea of guilty or a plea of nolo contendere for an offense in § 27-90-111, C.R.S. Conviction also includes receipt of a deferred judgment and sentence or a deferred adjudication, except that a person shall not be deemed to have been convicted if the person successfully completes a deferred sentence or deferred adjudication.
    - b. Employees charged with an offense under § 27-90-111, C.R.S., shall notify their appointing authority of such charge before returning to work. An employee who is charged with a disqualifying offense under (9)(b) of § 27-90-111, C.R.S., shall be placed on disciplinary suspension without compensation pending final disposition of the criminal proceeding. An employee who is charged with a disqualifying offense under (9)(c) of § 27-90-111, C.R.S., may be placed on disciplinary suspension without compensation pending final disposition of the criminal proceeding. If an employee who is suspended pursuant to this provision is not convicted, and if an appointing authority has not issued discipline that provides otherwise, then the employee is restored to the position and granted back pay and benefits.
    - c. If an appellate court reverses a conviction, or if an employee successfully completes a deferred sentence or a deferred adjudication, then a disciplinary action based solely on that conviction shall be reversed. In such an event, the employee is restored to the position and granted back pay and benefits.
    - d. An appointing authority may issue a disciplinary action based upon the conduct underlying a criminal charge irrespective of the outcome of the criminal proceeding.

Board Rule 6-13. Outcome of Rule 6-10 Meeting.

- A. If issuing discipline, the appointing authority shall provide a written Disciplinary Letter to the employee that includes the following:
  1. The factual basis and specific reasons for the discipline;
  2. The discipline imposed;

3. The employee's right to appeal the discipline to the Board, including the time frame for filing such an appeal and the place for filing such an appeal; and
  4. The Board's physical address, email address, website, telephone and facsimile numbers.
- B. The department shall provide the Disciplinary Letter to the employee no later than five (5) days following the effective date of the discipline.
- C. Proof of delivery of the Disciplinary Letter may be established by:
1. A dated return receipt from the United States Postal Service;
  2. A dated return receipt from a commercial delivery service provider;
  3. The employee's signature affixed to the Disciplinary Letter;
  4. An affidavit attesting hand-delivery; or
  5. An affidavit attesting that the sender transmitted the Disciplinary Letter to a valid email address combined with a copy of the email.
- D. If not issuing discipline, the appointing authority shall notify the employee in writing within five (5) days of the decision to not take disciplinary action.

Board Rule 6-14. Corrective and disciplinary actions are subject to Chapter 8, Resolution of Appeals and Disputes.

## Chapter 7 Separation

Authority for rules promulgated in Chapter 7, Separation, is found in the Colorado Constitution Art. XII, § 13, 14 and 15; and in C.R.S. §§ 24-50-109.5, 24-50-124, 24-50-126 and 24-50-136, C.R.S. Board rules are identified by cites beginning with "Board Rule". Chapter 7, Separations, revised as of 02/01/2021, unless otherwise noted.

### General Principles

Board Rule 7-1. The appointing authority shall communicate, or make a reasonable effort to communicate, with an employee before conducting any involuntary separation. The communication may be verbal or written, and shall provide an opportunity for the appointing authority and employee to exchange information about the separation. If the involuntary separation is an administrative discharge, the appointing authority shall comply with the rules in Chapter 5, Time Off. If the involuntary separation is a disciplinary action, the appointing authority shall comply with the rules in Chapter 6, Performance.

### Resignations and Job Abandonments

Board Rule 7-2. Resignations.

- A. Written notice of resignation. An employee shall give written notice of resignation directly to the appointing authority at least fourteen (14) days before the employee's last day of work. An email to the appointing authority satisfies the requirement of a written notice of resignation.
1. The employee and appointing authority may mutually agree to less than fourteen (14) days between the resignation and the employee's last day of work.
  2. An employee's failure to provide at least fourteen (14) days' notice may result in a delay in any payout of leave and a forfeiture of reinstatement privileges.
- B. Verbal notice of resignation. An employee who gives verbal notice of resignation of at least fourteen (14) days before the employee's last day of work should note that verbal notifications may delay any leave payout and result in a forfeiture of reinstatement privileges.
- C. Withdraw of resignation. An employee may withdraw a resignation only if the employee requests to withdraw the resignation within seventy-two (72) hours of when the employee first gave notice of the resignation or if permitted at the discretion of the employee's appointing authority. The employee's request to withdraw the resignation must be in writing to the appointing authority or to human resources. An email to the appointing authority or to human resources satisfies the requirement of a written withdrawal.
- D. Confirmation of resignation. After seventy-two (72) hours from when the employee gives notice of the resignation, but prior to the employee's termination date, the department shall give the employee a written Confirmation of Resignation that includes the following:
1. Confirmation that the department received employee's notice of resignation, the date of the resignation, the date of the employee's last day at work, and the termination date if different from the last day of work;
  2. A statement that if the employee believes the resignation was coerced or forced, the employee may appeal the resignation to the Board;

3. A statement that the deadline for filing an appeal to the Board is ten (10) days from the date of delivery of the Confirmation of Resignation; and
  4. The Board's physical address, email address, website, telephone and facsimile numbers.
- E. Delivery of the Confirmation of Resignation. Proof of delivery of the Confirmation of Resignation may be established by:
1. A dated return receipt from the United States Postal Service;
  2. A dated return receipt from a commercial delivery service provider;
  3. The employee's signature affixed to the Confirmation of Resignation;
  4. An affidavit of hand-delivery; or
  5. An affidavit attesting that the sender transmitted the Confirmation of Resignation to a valid email address combined with a copy of the email.

Board Rule 7-3. Resignations in lieu of disciplinary action. If an employee resigns in lieu of disciplinary action, the employee forfeits the right to file an appeal to the Board.

Board Rule 7-4. Job Abandonment.

- A. If an employee is absent without approved leave and advance notice for three (3) scheduled consecutive working days, the appointing authority, after making a reasonable effort to communicate with the employee, may construe the absence as a job abandonment and therefore an automatic resignation.
1. In the case of a documented medical condition, employees may seek leave retroactively if the medical condition was of such nature that it prevented the employee from providing advance notice. In the event an employee provides medical documentation showing that the employee was unable to provide advance notice, appointing authorities shall not construe the absence as an automatic resignation.
- B. Confirmation of Job Abandonment. The appointing authority shall give the employee a written Confirmation of Job Abandonment that includes the following:
1. The dates of the employee's absence without approved leave;
  2. A statement that the absence is construed as an automatic resignation;
  3. The effective date of the employee's termination;
  4. A statement of whether the employee is eligible or not for rehire;
  5. A statement that if the employee believes the absence was justified, the employee may appeal the separation to the Board;
  6. A statement that the deadline for filing an appeal to the Board is ten (10) days from the date of delivery of the Confirmation of Job Abandonment; and

7. The Board's physical address, email address, website, telephone and facsimile numbers.
- C. Proof of delivery of the Confirmation of Job Abandonment may be established by:
1. A dated return receipt from the United States Postal Service;
  2. A dated return receipt from a commercial delivery service provider;
  3. The employee's signature affixed to the Confirmation of Job Abandonment;
  4. An affidavit of hand-delivery; or
  5. An affidavit attesting that the sender transmitted the Confirmation of Job Abandonment to a valid email address combined with a copy of the email.
- D. Employees who abandon their jobs may be ineligible for rehire.

### Layoff Principles

Board Rule 7-5. Appointing authorities shall consider alternatives to minimize or avoid the need for layoffs of employees in the state personnel system.

Board Rule 7-6. Department heads shall administer the layoff process in accordance with this Chapter 7, Separation. Appointing authorities cannot use the layoff process as a substitution for discipline. The layoff process does not preclude appointing authorities from taking personnel actions, including discipline.

7-7. The only reasons for layoff are lack of funds, lack of work, or reorganization. The following applies to any reduction in force that results in the elimination of one or more occupied positions regardless of the reason for layoff:

- A. For any and all layoffs, department heads have the discretion to make the business decisions as to how their department will continue to meet its mission after engaging in the layoff process. These decisions include:
1. How to meet any constitutional or statutory mandates;
  2. Determining which classes or class series will best help the department meet its mission; and
  3. The level of staffing by various classifications and/or class series and the department functions to be staffed, either by facility location or department-wide.
- B. Department heads may delegate this authority to make any of the business decisions to subordinate appointing authorities within the department.
1. Such delegation shall be in writing and describe the parameters of the business decisions to be made by the subordinate appointing authority.

7-8. Layoff Plan: After the department makes its business decisions for all layoffs and ten (10) days prior to issuing the first (1st) layoff notice, the department shall publish a Layoff Plan, signed by the department head or designee, both in a conspicuous place where all impacted parties have access to view the publication and on the department's internet or intranet websites.

- A. The purpose of the Layoff Plan is to facilitate open and transparent strategic planning prior to the elimination of any positions and/or services.
- B. The Layoff Plan shall include the following:
  - 1. A description of the planned changes in the fundamental structure, positions, or functions accountable to one or more appointing authorities;
  - 2. If applicable, a list of the ranking factors and their relative weights;
  - 3. An organizational chart setting out the planned changes in the fundamental structure, positions, or functions accountable to one or more appointing authorities;
  - 4. The reasons for the change;
  - 5. The anticipated benefits and results, including any cost savings;
  - 6. A general description of the expected changes and their effects on employees;
  - 7. If applicable, a description of how the work performed by the eliminated positions will be absorbed by the department;
  - 8. A listing of the classes in which positions will be eliminated as contemplated in the Layoff Plan; and
  - 9. If there have been any modifications to the special qualifications for positions affected by the Layoff Plan within sixty (60) days or less prior to publication of the Layoff Plan, a list of such positions.
- C. When a function and position are transferred to another department, the employee occupying the position transfers.

Board Rule 7-9. After the department publishes its Layoff Plan, the layoff of individual employees shall be made in accordance with the procedures in Chapter 7, Separation, for determining the priorities for layoff.

**Procedures for Determining Priorities for Layoff**

7-10. In making layoff decisions, appointing authorities shall rank employees based upon seniority, performance and applicable veterans' preference.

Board Rule 7-11. Seniority is the total number of years of state service plus any veterans' preference.

- A. State service includes all employment for the State of Colorado even if employed outside the state personnel system.
- B. Veterans who have completed less than twenty (20) years of active military service receive a preference in calculating seniority by adding years of active military service to the total number of years of state service, up to ten (10) years.
- C. The calculation of the years of state service and active military service is rounded up for partial years.

- 7-12. Layoff Ranking: If applicable, the department head shall establish the ranking formula for the affected area(s). The formula shall be consistently applied to any certified employee affected by the layoff process for the affected area(s). The formula shall be communicated to all employees within the layoff plan. Employees with lower rankings shall be separated before employees with higher rankings except as follows:
- A. As set forth in the Colorado Constitution Art. XII, Section 15, no veteran with equal or greater number of years of service can be displaced before a non-veteran regardless of rank.
  - B. If there is a tie under the department's formula, then the employee with the earliest start date of employment with the State of Colorado shall be the higher ranked employee. If the employees are still tied, then the decision shall be made by taking into account any Equity, Diversity, and Inclusion program established by the Director or a department.
  - C. Probationary employees shall be separated before certified employees.
- 7-13. When a person is separated from state service based upon documented lack of funds, lack of work or reorganization, an appointing authority shall consider placing the person into a vacant funded position for which they qualify. An appointing authority should consider prior experience, past performance and tenure in making such decisions.

Board Rule 7-14. Trial service employees are treated as if certified in the trial service class during the layoff process. Conditional employees will be considered according to their previously certified class.

### **Layoff Notice Requirements**

- 7-15. The department shall publish the Layoff Plan at least fifty-five (55) days before the layoff is effective.
- A. These fifty-five (55) days shall include at least 45 days' notice to a certified employee that their position is being eliminated and they are being separated.
  - B. The layoff notice shall include appeal rights.
  - C. Proof of delivery of a layoff notice may be established by:
    - 1. A dated return receipt from the United States Postal Services;
    - 2. A dated return receipt from a commercial delivery provider;
    - 3. The employee's signature and date affixed to the layoff notice;
    - 4. An affidavit of hand-delivery; or
    - 5. An affidavit attesting that the sender transmitted the Layoff Notice to a valid email address combined with a copy of the email.
  - D. The department must provide written notice to probationary employees who are to be laid off at least fourteen (14) days before the layoff is effective.
- 7-16. Upon publishing the Layoff Plan, the department shall give written notice to the certified employee organization that the Layoff Plan has been published. An email to the certified employee organization's executive director satisfies this written notice requirement.

## Retention Rights

Board Rule 7-17. Certified employees who, as of January 1, 2013, were within five years of being eligible for full retirement under C.R.S. section 24-51-602(1)(a) shall have retention rights.

- A. In making retention decisions when there is more than one employee eligible for retention rights, a department shall rank eligible employees based upon performance and seniority.
- B. Unless the Board approves a request to limit the retention area, eligible employees shall have retention rights throughout their department. If a department requests to limit the retention area, it shall submit the request in writing to the Board at least four (4) weeks before the monthly Board meeting and must concurrently serve the request on all affected employees. Within two (2) weeks of receipt of the request to limit the retention area, anyone opposing the request may submit a written opposition to the Board. Departments shall obtain Board approval to limit the retention area at least thirty (30) days before publication of the Layoff Plan.
- C. An eligible employee shall meet the minimum qualifications and any bona fide special qualifications in order to have retention rights to a position.
- D. The department shall offer retention rights to eligible employees in the following order:
  - 1. To a funded vacant position in the same class as the eligible employee.
  - 2. To an occupied position in the same class as the eligible employee if the person occupying the position is a probationary employee.
  - 3. To a funded vacant position in a previously certified class of the eligible employee.
  - 4. To an occupied position in a previously certified class of the eligible employee if the person occupying the position is a probationary employee.
  - 5. To a position in the same class as the eligible employee that is occupied by a certified employee.
  - 6. To an occupied position in the same class series as the eligible employee that is occupied by a certified employee. In such event, the offer shall be to the highest level position in the same class series that does not result in a promotion.
- E. If there are multiple occupied positions that an eligible employee may retain at any step in this order, then the lowest ranked employee based on performance and seniority shall be displaced first.
- F. If the only available position at any step in this order falls outside a seventy-five (75) mile radius of the eligible employee's current work location, then the eligible employee may proceed to the next step. If the eligible employee accepts an offer outside of the seventy-five (75) mile radius, the employee can claim moving expenses as permitted by fiscal rule.
- G. When eligible employees exercise retention rights to a position, saved pay applies for a period of three (3) years after exercising retention rights. After three (3) years, the eligible employee's base pay shall not remain above the grade maximum for the position.

- H. If an eligible employee refuses a retention offer, the employee is laid off and placed on the departmental reemployment list.

**Reallocation**

- 7-18. If a position is allocated downward and the employee elects not to remain in the position or if a position is allocated upward and the employee does not qualify, is not appointed or elects not to remain in the position, the employee will be separated or, given retention rights pursuant to the provisions of Chapter 7, Separation. If a certified employee is separated or demoted due to an upward or downward allocation or layoff, the employee is placed on a departmental reemployment list.

**Appeals**

- Board Rule 7-19. All employees who are separated or who are upwardly or downwardly allocated to a different class in the course of a layoff shall have a mandatory right to a hearing before the Board. Acceptance of retention rights to another position does not eliminate the employee's appeal rights. Appeals shall be filed according to the procedures in Chapter 8, Dispute Resolution.

**Recordkeeping**

- Board Rule 7-20. Department heads shall provide any required or requested information to the Director or Board in a timely manner as requested.

## Chapter 8 Resolution of Appeals and Disputes

Authority for rules promulgated in Chapter 8, Resolution of Appeals and Disputes, is found in the Colorado Constitution Art. XII §13, § 24-34-402, 24-11-110, 24-50-101, 24-50-103, 24-50-104, 24-50-104.5, 24-50-123, 24-50-125, 24-50-125.3, 24-50-125.4, 24-50-125.5, 24-50-131, 24-50-132, and 24-50.5-101 to 107, C.R.S. Board rules are identified by cites beginning with “Board Rule”.

Board Rule 8-1. Chapter 8, Resolution of Appeals and Disputes, Part A contains the State Personnel Board Rules that govern appeals and includes the following:

- Section I: Overview & Filing with the Board.
- Section II: Grievances.
- Section III: Mandatory Board Hearings.
- Section IV: Discretionary Board Hearings & Preliminary Review Process.
- Section V: Petitions for Declaratory Orders.
- Section VI: Rules for Hearings.
- Section VII: General Provisions.
- Section VIII: State Personnel Board Review of Initial Decisions and other final orders issued by an Administrative Law Judge.
- Section IX: Settlement Process.

### Chapter 8, Part A. Board Rules for Appeals.

#### Part A. Section I. Overview & Filing with the Board

Board Rule 8-2. Chapter 8, Resolution of Appeals and Disputes applies to employees of and applicants to the state personnel system. Chapter 8, Resolution of Appeals and Disputes does not apply to individuals outside of the state personnel system.

#### Board Rule 8-2.1 Summary of Chapter 8, Part A

The summary is illustrative only. The language in the Board Rules is controlling. There are many parts of Chapter 8 that are not included in this summary.

#### Filing with the Board

An employee wanting to file an appeal with the Board shall follow the filing procedures in Chapter 8, Part A, Section I. The appeal shall use the standard Consolidated Appeal/Dispute Form found on the Board's website. Appeals are timely if received by the Board or postmarked no later than ten (10) days after receipt of the written notice of the action, or if no notice was required, no later than ten (10) days after the employee knew or should have known of the improper action.

#### Types of appeals in Chapter 8, Part A

Chapter 8 includes the procedures for resolving appeals and disputes. Appeals proceed depending on the nature of the employee's claim: (1) Grievances (Part A, Section II), (2) Disciplinary actions and actions that impact pay, status, or tenure (Part A, Section III), (3) CADA Discrimination (Part A, Section IV); (4) Whistleblower Act (Part A, Section IV); and (5) State Personnel Director's Procedures (Parts B, C, and D). In general, disciplinary actions and actions that impact a certified state employee's pay, status, or tenure are subject to a mandatory hearing before the Board. In general, grievance appeals, CADA discrimination claims, and Whistleblower Act claims are subject to a discretionary hearing before the Board. If an employee alleges claims that are subject to both a mandatory and a discretionary hearing, the Board may hear those claims in a single proceeding.

**1. Grievances**

An employee who is attempting to resolve a dispute internally should follow the grievance process and may file an appeal of a Step Two Grievance Decision to the Board. For example, an employee disputes a change to the employee's work schedule. The Board may use its discretion to review a Step Two Grievance Decision when it appears that: (a) the employment action violates the Whistleblower Act; (b) the employment action violates the Colorado Anti-Discrimination Act ("CADA"); (c) the Step Two Decision violates an employee's rights under the federal or state constitution; or (d) the Step Two Decision violates the Board's grievance rules or the department's grievance procedures.

***Part A. Section II: Grievances.***

***Part A. Section IV: Discretionary Board Hearings & Preliminary Review.***

**2. Discipline and Actions that impact Pay, Status, or Tenure**

A certified state employee may appeal a disciplinary action (such as a termination or demotion). A certified state employee may also appeal other actions that adversely affect the employee's pay, status, or tenure (such as a layoff or administrative separation). The Board will grant a hearing and issue a Notice of Hearing and Prehearing Order.

***Part A. Section III: Mandatory Hearings.***

***Part A. Section VI: Rules for Hearings.***

**3. CADA Discrimination and Retaliation**

Employees and applicants may appeal employment actions that violate the Colorado Anti-Discrimination Act ("CADA"). For example, the employee claims the action occurred because of race discrimination. CADA also prohibits retaliation. The Board may use its discretion to review these types of employment actions.

***Part A. Section IV. Discretionary Board Hearings & Preliminary Review.***

**4. Whistleblower Retaliation**

Employees may appeal employment actions that violate the State Employee Protection Act (commonly referred to as the "Whistleblower Act"). For example, the employee claims the action occurred in retaliation for making protected disclosures. The Board may use its discretion to review these types of employment actions.

***Part A. Section IV. Discretionary Board Hearings & Preliminary Review.***

**5. State Personnel Director's Review: selection, performance management, and coverage designation.**

An applicant's or a certified employee's appeal may fall within the State Personnel Director's Review process.

***Part B. Section I: Filing with the Director.***

***Part B. Sections I and II: Selection disputes.***

***Part C: Performance management disputes.***

**Part D: Coverage designation disputes.**

**6. Exclusions**

Employees do not have the right to a hearing in the following situations:

- Discipline of probationary employees for unsatisfactory performance;
- Reversion of trial service employees for unsatisfactory performance;
- Demotion of conditional employees to the class in which last certified; and
- Resignations in lieu of a disciplinary action.

However, employees may ask the Board to grant a discretionary hearing in the above-listed situations if the situation falls under Chapter 8, Part A, Section IV.

The following items are not subject to the grievance process:

- Disciplinary actions;
- Any action that adversely affects pay, status, or tenure;
- Selection disputes;
- Performance management disputes that do not result in a disciplinary action;
- Coverage designation disputes;
- In-range salary movements;
- Issues pertaining to leave sharing;
- Discretionary pay differentials; and
- Hazardous duty premium pay

Board Rule 8-3. All disputes may be resolved informally. Parties with appeals pending before the Board are encouraged to use the settlement process in Chapter 8, Resolution of Appeals and Disputes, Part A, Section IX.

Board Rule 8-4. Notice of Appeal Rights. Applicants and employees shall be notified, in writing, of any rights to dispute a final department decision that adversely impacts pay, status, or tenure and any final grievance decisions or selection decisions.

- A. The notice shall include a statement that the deadline for filing an appeal to the Board is ten (10) days from the date of receipt of the notice, the Board's physical address, email address, website, telephone and facsimile numbers, the requirement that the appeal shall be in writing, and the availability of the **Consolidated Appeal/Dispute Form**.

Board Rule 8-5. Appealing to the Board.

- A. The Appeal. The appeal shall use the standard Consolidated Appeal/Dispute Form found on the Board's website.

- B. Contents of the Appeal. The appeal shall clearly state the following:

1. Identification of the person filing the appeal ("Complainant"), Complainant's address, telephone number, email address and whether Complainant is a certified employee or a probationary employee.
2. The name, address, email address and telephone number of Complainant's legal representative, if any.
3. The department ("Respondent") that took the alleged improper action.
4. The action that Complainant believes was improper and the reasons Complainant disagrees with the action.

5. The date Complainant received notice of the action and a copy of the written notice, if one was provided.
  6. The relief requested.
  7. The appeal shall indicate if it is being filed with the Board, the Director, or both.
  8. The appeal shall be signed by Complainant or Complainant's attorney.
- C. Filing the Appeal. The appeal shall be filed according to rules in Chapter 8, Resolution of Appeals and Disputes, Part A, Section I.

Board Rule 8-6. Where to File. Appeals and other documents may be filed by hand delivery, United States Postal Service, commercial delivery service, facsimile, or via email.

- A. The physical address for filing is State Personnel Board, 1525 Sherman Street, 4th Floor, Denver, Colorado 80203.
1. Normal business hours for the Board are from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for official state holidays or days that state offices in Denver are closed due to weather or safety by governor order.
- B. The facsimile number is 303-866-5038. Facsimile filings may not exceed ten (10) pages.
- C. Filings Via Email.
1. The Board's email address is `dpa_state.personnelboard@state.co.us`.
  2. The subject line for the filing via email shall include:
    - a. Case name;
    - b. Case number (if a new appeal, write "New Appeal"); and
    - c. The phrase "Electronic Filing."
    - d. Example: "Doe v. Department (2020B879) (Electronic Filing)" and "Doe v. Department (New Appeal) (Electronic Filing)".
  3. The appeal, motion, or other filings must be attached to the email as a PDF document. The Board will only consider the contents of the attached document. The Board will not consider information in the text of the email. The email is not a filing; rather the email is a method for parties to file something with the Board.
  4. As with any filing, the attached filings shall be signed. This can be done by signing the document and scanning the document with the signature. This can also be done by writing or typing "/s/" followed by the filer's full name on the signature block line, so long as the person filing the document signs a paper form of the document and makes that form available for situations where a judge might seek verification of the signature.
  5. Upon its receipt of a filing via email, the Board will send the filing party an email stating "Received." That email will be the proof of filing.

Board Rule 8-7.           Filing Deadlines.

- A. Appeals or petitions for hearing are timely if received by the Board or postmarked no later than ten (10) days after receipt of the written notice of the action, or if no notice was required, no later than ten (10) days after the employee knew or should have known of the alleged improper action.
- B. Other documents filed with the Board are due according to the deadlines in Chapter 8, Resolution of Appeals and Disputes, Part A, or as set in a Board Order.
- C. If a deadline falls on a weekend, official state holiday, or by governor order the deadline is extended to the next regular business day.
- D. Any motion to extend a deadline shall be filed prior to the deadline.
- E. Other than as set forth in part (A) of this Rule, all filings must be received by the Board by 5:00 p.m. Colorado time to be deemed to have been filed on that date
- F. Upon satisfactory proof that a filing via facsimile or email was untimely because of the Board's technology problems, the Board may enter an order deeming the filing as timely.
- G. Failure to timely file an appeal may result in the Board losing jurisdiction over the matter and result in the dismissal of the appeal.

Board Rule 8-8.           Requirements for all Board filings.

- A. The appeal shall be filed in accordance to the requirements in Chapter 8, Resolution of Appeals and Disputes, Part A, Section I.
- B. After the appeal has been filed, all documents filed with the Board shall contain the following:
  - 1. The case number;
  - 2. The names of the parties;
  - 3. The title of the document;
  - 4. The contact information for the party or the attorney filing the document, including email address, physical address, and phone number;
  - 5. If the document is filed by an attorney, the attorney registration number; and
  - 6. The signature of the party or the attorney filing the document. This signature is in addition to the signature on the certificate of service.

Board Rule 8-9.           Service of Filings and Certificate of Service.

- A. Whenever a party files anything with the Board, that party shall serve the opposing party with a copy. This service shall be done at the same time the party files the document with the Board.
- B. Service to the opposing party shall be made by email. In the event the opposing party cannot be served by email, service may be accomplished by hand delivery, United States Postal Service, commercial delivery service, or facsimile transmission.

- C. When an attorney represents a party, service shall be made to the attorney.
- D. Any documents filed with the Board shall include a signed certificate of service. The certificate of service shall provide:
  - 1. The address used to deliver a copy of the document to the opposing party (for example, the email address);
  - 2. The method of delivery of the document to the opposing party (for example, sent email); and
  - 3. The date of delivery of the document to the opposing party.

Board Rule 8-10. Size and Format of Filings. All documents filed with the Board shall be prepared as follows:

- A. 8-1/2" x 11" page size, on plain, white paper (recycled paper preferred);
- B. Black type or print;
- C. No less than twelve (12) point font, excluding footnotes. Footnotes shall be no less than nine (9) point font;
- D. Margins of at least one inch (1") at the top, left, right, and bottom of each page; and
- E. If single-spaced, there shall be a blank line between each paragraph.

#### **Part A. Section II. Grievances**

Board Rule 8-11. Actions Subject to the Grievance Process. The grievance process applies to all workplace actions except for: (a) disciplinary actions; (b) any action that adversely affects pay, status, or tenure; (c) selection disputes; (d) performance management disputes that do not result in a disciplinary action; (e) coverage designation disputes; (f) in-range salary movements; (g) issues pertaining to leave sharing; (h) discretionary pay differentials; and (i) hazardous duty premium pay.

Board Rule 8-12. Grievance - General Provisions.

- A. The grievance process is designed to address and resolve problems at the lowest level possible.
- B. Each department shall establish a grievance process. At a minimum, the department's grievance process shall include the procedures in Chapter 8, Resolution of Appeals and Disputes, Part A, Section II.
- C. Departments shall make their grievance processes readily available to employees. This requirement may be satisfied by posting the grievance process on the department's website.
- D. A grievance initiated within ten (10) days from the disputed action or occurrence suspends the deadline to file an appeal with the Board if the written grievance at Step Two asserts:
  - 1. Discrimination or retaliation in violation of the Colorado Anti-Discrimination Act ("CADA"); or

2. Retaliation for disclosing protected information in violation of the Whistleblower Act.

Board Rule 8-13. Grievance Procedures.

A. Step One:

1. Initiating a Grievance. To initiate the grievance process, the employee shall notify the employee's supervisor or another person within the employee's chain of command. Such notification may be verbal, but must communicate that the employee is initiating Step One of the grievance process.
2. Deadline for Initiating a Grievance. The employee shall initiate the grievance process within ten (10) days from the disputed action or occurrence.
3. Step One Discussion. (a) The Step One Discussion shall include the employee and the supervisor or another person within the employee's chain of command. (b) The Step One Discussion shall include ideas for resolving the matter. (c) The employee does not have the right to representation during the Step One Discussion. (d) The Step One Discussion shall occur within fourteen (14) days from the employee initiating the grievance process.
4. Step One Decision. (a) The employee shall be informed in writing of the Step One Decision. (b) The Step One Decision is binding on the parties unless the employee proceeds to Step Two of the grievance process. (c) The department shall provide its Step One Decision to the employee within fourteen (14) days from the date of the Step One Discussion. (d) The Step One Decision shall state that if the employee initiates Step Two, the employee must provide a written grievance to the appointing authority within ten (10) days from receipt of the Step One Decision. (e) The Step One Decision shall identify the employee's appointing authority.

B. Step Two:

1. Written Grievance. To initiate Step Two of the grievance process, the employee shall provide a written grievance to the employee's appointing authority. The written grievance shall include all of the reasons the employee believes the action or occurrence was improper. Only the issues raised in the written grievance will be considered in subsequent proceedings.
2. Deadline for Initiating Step Two. (a) The employee shall initiate Step Two of the grievance process within ten (10) days from receipt of the Step One Decision. (b) If the department fails to issue the Step One Decision within fourteen (14) days from the Step One Discussion, the employee may initiate Step Two without awaiting the Step One Decision but shall do so no later than twenty-one (21) days after the Step One Discussion.
3. Review of Step Two Grievance. (a) The appointing authority will review the grievance at Step Two of the grievance process unless the appointing authority appoints another person or a panel to investigate and/or make recommendations regarding the grievance. (b) The appointing authority may delegate the Step Two Decision to another person or a panel.

4. Step Two Meeting. (a) The appointing authority or delegate will meet with the employee to gather information and/or attempt to resolve the grievance. (b) The Step Two Meeting shall occur within twenty-eight (28) days from the employee initiating Step Two. (c) The employee may bring a representative to the Step Two Meeting that may or may not be an attorney. (d) A representative during the Step Two Meeting may participate and speak during the meeting but the employee is expected to answer any questions and actively participate.
  5. Step Two Decision. (a) The employee shall be informed in writing of the Step Two Decision. (b) The department shall provide its Step Two Decision to the employee within fourteen (14) days from the date of the Step Two Meeting. (c) The Step Two Decision is binding on the parties unless the employee elects to appeal the Step Two Decision to the Board.
- C. Any of the timeframes for completion of the grievance process may be waived or modified if agreed to by both parties, including deferral of action to allow the parties a chance to resolve the issue.

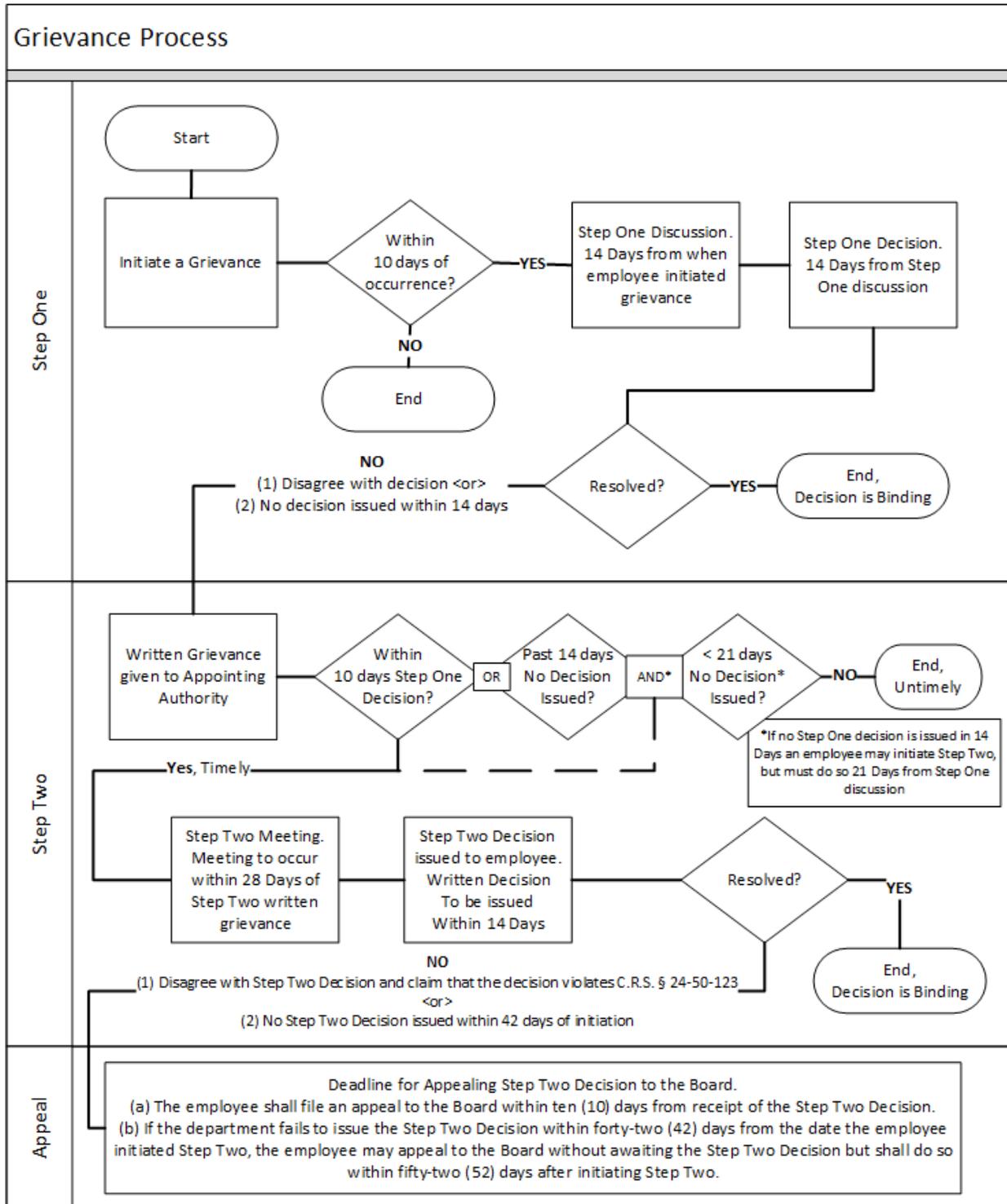
Board Rule 8-14. Deadline for Appealing Step Two Decision to the Board. (a) The employee shall file an appeal to the Board within ten (10) days from receipt of the Step Two Decision. (b) If the department fails to issue the Step Two Decision within forty-two (42) days from the date the employee initiated Step Two, the employee may appeal to the Board without awaiting the Step Two Decision but shall do so within fifty-two (52) days after initiating Step Two. (c) The Board may exercise its discretion to hear an appeal of a Step Two Decision under the Board Rules for discretionary hearings set forth in Part A, Section IV of this Chapter 8.

Board Rule 8-15. Effect of a Separation on a Pending Grievance.

- A. If a grievant is separated from employment in the state personnel system, any grievance pending at the department level is ended.
- B. If the grievant's employment is restored at the same department, then the grievant may resume any grievance that had been pending at the time of the separation. To resume a grievance, the restored employee shall notify the supervisor in writing within ten (10) days after the employee's return to work.
- C. A separation does not preclude the Board from hearing a discrimination or a whistleblower claim related to the facts underlying a grievance.

Board Rule 8-15.1. Grievance Flowcharts

The diagram is illustrative only. The language in the Board Rules is controlling.



**Part A. Section III. Mandatory Board Hearings**

Board Rule 8-16. Appeals Subject to a Mandatory Hearing before the Board.

- A. Except as provided in this Rule, any employment action that adversely affects a certified employee's current base pay, status, or tenure may be appealed and will be set for hearing if timely filed. An adverse action includes the loss of rights to which an employee is entitled (including denial of reemployment rights or removal from a reemployment list).
- B. Employees do not have the right to a hearing in the following situations;
  - 1. Discipline of probationary employees for unsatisfactory performance;
  - 2. Reversion of trial service employees for unsatisfactory performance;
  - 3. Demotion of conditional employees to the class in which last certified; and
  - 4. Resignations in lieu of a disciplinary action.

Board Rule 8-17. Hearing.

- A. If the appeal is subject to a mandatory hearing before the Board, an Administrative Law Judge will issue a Notice of Hearing and Prehearing Order that sets the appeal for hearing.
- B. The hearing will proceed pursuant to the rules set forth in Chapter 8, Resolution of Appeals and Disputes, Part A, Section VI.
- C. If good cause is shown or upon agreement of the parties, an Administrative Law Judge may receive all or parts of the evidence by telephone, video-conferencing, or in written form.

**Part A. Section IV. Discretionary Board Hearings & Preliminary Review**

Board Rule 8-18. Appeals Subject to the Board's Discretion. The Board may use its discretion to grant a hearing for employment actions where the applicant or employee does not have a right to a mandatory hearing and when it appears that:

- A. The employment action violates the State Employee Protection Act (commonly known as the "Whistleblower Act");
- B. The employment action violates the Colorado Anti-Discrimination Act ("CADA");
- C. An appointing authority's decision violates a rule or statute relating to the comparative analysis process. However, the Board may only review such decision after the Director has issued a final decision pursuant to § 24-50-112.5(4), C.R.S.;
- D. A department's final grievance decision violates an employee's rights under the federal or state constitution;
- E. A department's final grievance decision violates the Board's grievance Rules or the department's grievance procedures; or
- F. A final decision of the Director on a matter involving the overall administration of the state personnel system is arbitrary, capricious, or contrary to rule or law.

- G. The Board cannot grant a hearing to a probationary employee who appeals discipline for unsatisfactory performance unless the employee alleges unlawful discrimination or other statutory or constitutional violation.

Board Rule 8-19. Petitioning the Board for a Discretionary Hearing.

- A. Individuals wishing to request a discretionary hearing shall file an appeal with the Board using the **Consolidated Appeal/Dispute Form**. An appeal requesting a discretionary hearing is often referred to as a "Petition for Hearing."
- B. The Board shall grant or deny a Petition for Hearing within one hundred and twenty (120) days from the filing of the appeal with the Board.
- C. If the Board grants a Petition for Hearing, the matter is set for hearing and proceeds in accordance to the Rules for Hearings in Chapter 8, Resolution of Appeals and Disputes, Part A, Section VI.
- D. Upon receipt of a Petition for Hearing, an Administrative Law Judge will issue a Notice of Preliminary Review unless the petition alleges a violation of CADA or the Whistleblower Act.

Board Rule 8-20. Allegations of a Violation of the Colorado Anti-Discrimination Act ("CADA").  
Pursuant to § 24-50-125.3, C.R.S., the Board has discretionary jurisdiction over claims of discrimination within the state personnel system.

- A. CCRD Investigations. Upon receipt of an appeal on matters covered by the CADA, § 24-34-402, C.R.S., the Board will refer the matter to the Colorado Civil Rights Division ("CCRD") for investigation and issue a Notice of Referral.
  - 1. If the applicant or employee wants the CCRD to investigate the discrimination claim, the person shall file a charge of discrimination with the CCRD. The person shall file the charge with the CCRD within twenty (20) days from the date of the certificate of service of the Board's Notice of Referral.
  - 2. Within ten (10) days from filing a charge of discrimination with the CCRD, the applicant or employee shall file a verification with the Board indicating that a CCRD charge has been filed. If an individual fails to file a verification, the Board may deem that the individual has waived the CCRD investigation and the Board will proceed to reviewing the discrimination claim.
  - 3. At any time prior to completion of the CCRD investigation, the applicant or employee may waive the CCRD investigation and the Board will then proceed to Preliminary Review or hearing.
  - 4. If the allegation is against the CCRD, the Board will contract with a third party to investigate the matter.
  - 5. Absent an extension of time, the Board will issue a Notice of Preliminary Review or hearing after two hundred and seventy (270) days from the date the Board referred the matter to the CCRD even if the CCRD investigation is not completed.

B. CCRD Opinions.

1. When the CCRD completes its investigation, the CCRD issues a written opinion of probable cause or no probable cause. The CCRD provides its opinion to the Board. The Board then notifies the parties of the CCRD's opinion and their right to appeal it to the Board within ten (10) days of receipt of the notification.
2. If the CCRD concludes there is probable cause of unlawful discrimination, the Board will set the matter for hearing.
3. If the CCRD concludes there is no probable cause of discrimination, the individual may file an objection with the Board within ten (10) days from the notification of the CCRD's no probable cause opinion.
4. To file an objection of the CCRD opinion, the applicant or employee shall provide a written statement to the Board indicating that the individual requests the Board to decide the discrimination claim.
5. If an applicant or employee does not file an objection to the Board within ten (10) days from receipt of the notification of the CCRD's no probable cause opinion, the discrimination claim will be deemed abandoned and will be dismissed.
6. If an applicant or employee files an objection to the Board within ten (10) days from receipt of the notification of the CCRD's no probable cause opinion, the Board shall:
  - a. Set the matter for hearing or adopt the CCRD's opinion as its own if the matter falls under § 24-50-125.3, C.R.S.; or
    - i. For the Board to adopt the CCRD's opinion, the CCRD's findings must demonstrate that Complainant is unable to establish a prima facie case of discrimination as set forth in *Bodaghi & State Personnel Board v. Department of Natural Resources*, 995 P.2d 288 (Colo.2000).
    - ii. Prior to adopting the CCRD's opinion, the Board shall issue an Order to Show Cause to the parties to show why the Board should not adopt the opinion.
  - b. Set the matter for Preliminary Review if the matter falls under § 24-50-123, C.R.S.; or
  - c. Set the matter for hearing if the matter falls under § 24-50-124 or § 24-50-125, C.R.S.

Board Rule 8-21. Allegations of a Violation of the Whistleblower Act. Pursuant to § 24-50.5-104, C.R.S., the Board has discretionary jurisdiction over claims of retaliation in violation of the Whistleblower Act filed by employees in the state personnel system.

- A. Employees shall file both the Consolidated Appeal/Dispute Form and the Whistleblower Complaint Form. Both forms are available on the Board's website.
- B. The Board will notify the employee of the notice requirements of the Governmental Immunity Act, § 24-10-101, C.R.S., et seq.

- C. The Board will refer the whistleblower complaint to the department.
- D. The department shall respond to the whistleblower complaint as follows:
  - 1. The department's response shall provide substantive responses to each of the material allegations in the whistleblower complaint.
  - 2. The department shall file its response within forty-five (45) days from the Board's referral to the department of the whistleblower complaint.
- E. Upon the department filing its response to the whistleblower complaint, unless the matter is stayed pending a CCRD investigation, the Board will issue a Notice of Preliminary Review or a Notice of Hearing.

Board Rule 8-22. Allegations Regarding the Comparative Analysis Process.

- A. Pursuant to § 24-50-112.5(4)(e), C.R.S., the Board has discretionary jurisdiction to review final decisions of the Director regarding alleged violations of the comparative analysis process.
- B. The Board may only grant the Petition for Hearing when it appears that the appointing authority's decision violates the comparative analysis standards set forth in § 24-50-112.5, C.R.S., in any other provision of law, or in any Director's Procedures relating to the comparative analysis process.

Board Rule 8-23. Other Allegations Subject to the Board's Discretion. The Board will issue a Notice of Preliminary Review upon the timely filing of an appeal that alleges:

- A. A department's final grievance decision violates the employee's rights under the federal or state constitution;
- B. A department's final grievance decision violates the Board's grievance Rules or the department's grievance procedures; or
- C. A final decision of the Director on a matter involving the overall administration of the state personnel system was arbitrary, capricious, or contrary to rule or law.

Board Rule 8-24. The Parties' Obligation to Disclose Information. Within fifteen (15) days from the date of the certificate of service of the Notice of Preliminary Review, the parties shall provide to each other the disclosures of documents as required in Part A, Section VI of this Chapter 8 for mandatory disclosures.

Board Rule 8-25. Information Sheets. After the Board issues a Notice of Preliminary Review, each party is required to file an Information Sheet.

- A. Deadlines.
  - 1. Complainant shall file an Information Sheet with the Board within twenty-five (25) days from the date of the Notice of Preliminary Review.
  - 2. Respondent shall file its Information Sheet with the Board within ten (10) days from its receipt of Complainant's Information Sheet.

3. Complainant may file a reply in further support of Complainant's Information Sheet within five (5) days of Complainant's receipt of Respondent's Information Sheet..
- B. Extension of Time. Motions for extension of time of more than five (5) days to file Information Sheets will not be granted.
  - C. Page Limits. Information Sheets are limited to ten (10) pages. Replies in further support of Complainant's Information Sheet are limited to five (5) pages. These page limits do not include the case caption, signature block, certificate of service and exhibits.
  - D. Burden. The Complainant has the burden to persuade the Board that it appears the employment action violates the applicant's or employee's rights. In CADA cases, the Complainant meets their burden by establishing the four prongs of a prima facie case of discrimination as set forth in *Bodaghi & State Personnel Board v. Department of Natural Resources, 995 P.2d 288 (Colo.2000)*, including that the evidence in the record supports or permits an inference of unlawful discrimination. In Whistleblower Act cases, the Complainant meets their burden by establishing disclosure of matters within the Whistleblower Act's protections and that the disclosures were a substantial or motivating factor in the discipline. In cases alleging a violation of the grievance process, Complainant meets their burden by establishing facts showing that the department violated a Board Rule or department procedure governing grievances, the applicable Rule or Procedure, and that meaningful relief can be granted.
  - E. Content of Complainant's Information Sheet. Complainant's Information Sheet shall state the following information:
    1. The facts Complainant is prepared to prove if a hearing is granted;
    2. The legal arguments and authorities that support Complainant's claims;
    3. The names of all anticipated witnesses, together with a description of the person's anticipated testimony;
    4. A list of each exhibit that supports Complainant's claims; and
    5. A description of the remedy or relief sought by Complainant.
  - F. Content of Respondent's Information Sheet. Respondent's Information Sheet shall state the following information:
    1. The facts Respondent is prepared to prove if a hearing is granted;
    2. The legal arguments and authorities that support Respondent's defenses;
    3. The names of all anticipated witnesses, together with a description of the person's anticipated testimony;
    4. A list of each exhibit that supports Respondent's defenses; and
    5. A description of any remedy or relief sought by Respondent.
  - G. Filing Requirements for Information Sheets and Exhibits. In addition to the Board's general requirements for all filings, the parties shall:

1. Carefully review all exhibits and redact any personal identifying information. Redactions shall include mailing and physical addresses, email address(es), telephone number(s), dates of birth, social security numbers, driver license numbers, passport numbers, employee identification numbers, military identification numbers, student identification numbers, health insurance identification numbers, biometric data, and any other personal identifying information; and
2. Provide the Board with an electronic version of the Information Sheets as a Word document and an electronic version of the exhibits as a PDF file. If creating electronic versions is not available to you, then please contact the Board for assistance.

Board Rule 8-26. Preliminary Recommendation.

- A. An Administrative Law Judge will review the material presented by the parties in their Information Sheets.
- B. An Administrative Law Judge will issue a Preliminary Recommendation indicating whether the judge recommends that the Board grant or deny a hearing.
- C. The Preliminary Recommendation shall recite the parties' factual allegations and legal arguments.

Board Rule 8-27. Board Decision Whether to Grant or Deny a Hearing.

- A. The Board will consider the Preliminary Recommendation and render a decision whether to grant or deny a hearing pursuant to § 24-50-123(3), C.R.S.
  1. In making its decision whether to grant or deny a hearing, the Board will only consider the Preliminary Recommendation and the material provided by the parties in their Information Sheets, including any exhibits.
- B. If a hearing is granted, it will proceed in accordance with the Rules for Hearings in Chapter 8, Resolution of Appeals and Disputes, Part A, Section VI.
- C. If a hearing is denied, the Board will issue an order that includes further appeal rights.

**Part A. Section V. Petitions for Declaratory Orders**

Board Rule 8-28. Any person may petition the Board to issue a Declaratory Order regarding the applicability of a statute, or Board Rule, or other legal authority. However, parties to appeals pending before the Board shall not file Petitions for Declaratory Orders on issues raised in those appeals.

Board Rule 8-29. Form of a Petition for a Declaratory Order.

- A. Petitions for Declaratory Orders shall conform to the filing requirements in Chapter 8, Resolution of Appeals and Disputes, Part A, Section I.
- B. Petitions for Declaratory Orders shall specify:
  1. The statute or Board Rule or other legal authority that the petitioner requests the Board to entertain.

2. A description of the controversy or uncertainty giving rise to the petition.
3. Whether a Declaratory Order will remove the controversy or uncertainty.
4. Whether the petitioner has another avenue for resolving the controversy or uncertainty; and
5. Whether there is another proceeding pending before the Board, the CCRD, a court, or another department involving the controversy or uncertainty.

**Board Rule 8-30. Review of a Petition for a Declaratory Order.**

- A. Upon receipt of a Petition for a Declaratory Order, an Administrative Law Judge may:
  1. Order briefing on the issues presented in the Petition for a Declaratory Order; and/or
  2. Hear oral arguments on the issues presented in the Petition for a Declaratory Order.
- B. At its sole discretion, an Administrative Law Judge will either issue a Declaratory Order or notify the petitioner that a Declaratory Order is not being issued.

**Board Rule 8-31.** A Declaratory Order may be reviewed by the Board pursuant to Chapter 8, Resolution of Appeals and Disputes, Part A, Section VIII. Following Board review, a Declaratory Order is subject to judicial review.

**Part A. Section VI. Rules for Hearings**

**Board Rule 8-32. Notice of Hearing.** An Administrative Law Judge will issue a Notice of Hearing and Prehearing Order upon receipt of an appeal subject to a mandatory hearing, upon the Board granting a discretionary hearing, or when the Board does not adopt the CCRD's opinion as its own. At the discretion of the Administrative Law Judge, the Notice of Hearing may be in the form of a Scheduling Conference.

**Board Rule 8-33. Mandatory Disclosures.**

- A. Within twenty-one (21) days from the date of the certificate of service of the Notice of Hearing or of a Notice of Scheduling Conference, the parties shall provide to each other these mandatory disclosures:
  1. Complainant shall produce all documents and recordings in Complainant's possession that are relevant to the factual allegations or claims at issue in the appeal. If the Complainant is appealing a termination, the Complainant shall also produce all:
    - a. Documents relevant to calculation of lost pay and benefits including:
      - i. Income and benefits of subsequent employment, including the last three (3) months of pay stubs.

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- (a) Respondent shall not contact a prospective or current employer to discover information about Complainant without providing Complainant ten (10) days notice so Complainant has an opportunity to file a motion for protective order or a motion to quash. If Complainant files such a motion, Respondent shall not initiate contact until the motion is ruled upon.
        - ii. Unemployment benefit documents that are relevant to any calculation of damages.
      - b. Any witnesses that the Complainant knows that may have information relevant to the factual allegations or claims, and a brief description of the information believed to be known by that witness.
    - 2. Respondent shall produce all:
      - a. Documents in the Complainant's personnel file;
      - b. The relevant personnel policies and employee handbooks;
      - c. The materials discussed by the appointing authority during the Rule 6-10 meeting and any of its recordings of the meeting;
      - d. Documents and recordings relevant to the factual allegations, claims, or defenses at issue in the appeal including:
        - i. documents or recordings considered or relied upon by the appointing authority in making a disciplinary decision;
        - ii. documents or recordings among or between the appointing authority, Complainant, Complainant's supervisor, and human resources relevant to the issues in the appeal;
        - iii. documents or recordings of any investigation related to the factual allegations; and
        - iv. any witness statements.
      - e. Documents showing the Complainant's compensation and benefits at the time of the disputed action including Complainant's pay stubs for the three months preceding the disputed action;
      - f. Unemployment benefit documents that are relevant to any calculation of damages; and
      - g. Any witnesses that the Respondent knows that may have information relevant to the factual allegations or claims, and a brief description of the information believed to be known by that witness.
  - B. At least thirty (30) days before the close of discovery, the parties shall disclose any expert witnesses a party may call at hearing including:
    - 1. The name, address, email address, telephone number and the qualifications of the expert witness; and

2. A detailed statement as to the opinions or conclusions to which the expert is expected to testify. This requirement may be satisfied by the party incorporating a resume for each expert and a report containing the opinions or conclusions of each expert, along with the basis of each opinion or conclusion.
- C. The parties shall not file their disclosures with the Board.
- D. The term “documents” in this Board Rule includes writings, drawings, graphs, charts, photographs, emails, notes, or other documents of any kind.

Board Rule 8-34. Discovery. Unless modified by the Administrative Law Judge for good cause, the following procedures govern discovery:

- A. Discovery Deadlines. Discovery requests shall be served no later than twenty-eight (28) days from the date of the certificate of service of the Notice of Hearing or of a Notice of Scheduling Conference. Depositions shall be completed at least twenty (20) days prior to the start of an evidentiary hearing. Responses to interrogatories, requests for production of documents, and requests for admissions shall be provided within twenty (20) days from service of the request.
- B. Permitted Discovery. Each party may take a combined total of not more than twelve (12) hours of depositions. Each party may serve up to fifteen (15) requests for production of documents. Each party may serve twenty (20) interrogatories consisting of one (1) question each. Each party may serve twenty (20) requests for admission consisting of one (1) admission each.
  1. For good cause shown, the Board may modify the limits in this rule.

Board Rule 8-35. Prehearing Statements. At least fifteen (15) days prior to the start of the evidentiary hearing, the parties shall file a Prehearing Statement with the following:

- A. Statement of Claims and Defenses. A statement of all claims or defenses asserted by the party filing the Prehearing Statement. Complainant shall also include background information, including the action being appealed and date of the action, the date Complainant was notified of the action, Complainant’s job position and time in the position at the time of the action (including date Complainant was certified in the position), Complainant’s current position, and the reasons Complainant disagrees with the action;
- B. Undisputed Facts. A statement of the facts that the party filing the Prehearing Statement believes are stipulated or undisputed;
- C. Disputed Issues of Fact. A statement of the facts that the party filing the Prehearing Statement believes are true but the opposing party disputes;
- D. Pending Motions. A list of all outstanding motions that the Administrative Law Judge has not yet decided;
- E. Points of Law. The legal arguments and authorities that support the party’s claims or defenses, including statutes, case law, Board Rules, and Board decisions;
- F. Witnesses. The name, address, email address, and telephone number of any witness who the party may call at hearing, with a description of the person’s testimony;

- G. Experts. The name, address, email address, telephone number and the qualifications of any expert witness a party may call at hearing, together with a detailed statement as to the opinions or conclusions to which the expert is expected to testify. This requirement may be satisfied by the party incorporating a resume for each expert and a report containing the opinions or conclusions of each expert, along with the basis of each opinion or conclusion;
- H. Exhibits. A statement regarding whether the party will be calling any expert witness;
- I. Redactions to Exhibits. Both sides shall carefully review all exhibits and redact any personal identifying information. Redactions shall include mailing and physical addresses, email address(es), telephone number(s), dates of birth, social security numbers, driver license numbers, passport numbers, employee identification numbers, military identification numbers, student identification numbers, health insurance identification numbers, biometric data, and any other personal identifying information;
- J. Stipulations. A listing of all stipulations of fact or law, or admissibility of evidence (including exhibits), as well as any other stipulations reached by the parties; and
- K. Remedy. List the remedies and/or relief the party is requesting. If the party is requesting the Board to order the opposing party to do something, the party shall specify what it wants the Board to order. If Complainant is requesting money damages, Complainant shall list the precise amount and the basis for requesting that amount. If a party is requesting another type of remedy, the party shall specify the nature of the request.

Board Rule 8-36. Subpoenas to Provide Testimony.

- A. Respondents shall make the appointing authority and other employees with relevant information available to furnish testimony at a deposition or an evidentiary hearing even without a subpoena.
- B. For non-state employees, parties may issue and serve subpoenas in conformance with the Colorado Rules of Civil Procedure for those individuals to appear at a deposition or an evidentiary hearing.
- C. For appeals under this Chapter 8, Resolution of Appeals and Disputes, state employees who serve as witnesses may count any time spent at a deposition or hearing as work time.

Board Rule 8-37. Evidentiary Hearings.

- A. Any stipulated exhibits and facts will be admitted into evidence.
- B. The party with the burden of proof proceeds first and may call witnesses and seek the admission of evidence. The opposing party proceeds second and may call witnesses and seek the admission of additional evidence. In cases with mixed burdens of proof, the Administrative Law Judge shall determine the order of presentation on a case-by-case basis. Regardless of who has the burden, witnesses may be called out of order at the discretion of the Administrative Law Judge.
- C. At the sole discretion of the Administrative Law Judge, a party may present rebuttal evidence.

- D. Each party is responsible for deciding the witnesses to call at the hearing. Testimony is given under oath or affirmation. Each party may cross-examine the other party's witnesses.
- E. Each party is responsible for deciding the exhibits to use and to offer for admission into evidence.
- F. The Administrative Law Judge may call a witness and may also examine any witness called by a party.
- G. The Administrative Law Judge will record the proceedings by an electronic recording device.

Board Rule 8-38. Conduct and Decorum. To ensure proper conduct and decorum, an Administrative Law Judge may:

- A. Exclude any person from the hearing;
- B. Restrict media access as provided by the Colorado Code of Judicial Conduct and the Rules of Civil Procedure; and
- C. Enter other orders that are reasonable to maintain the order and decorum of the proceedings.

Board Rule 8-39. Initial Decision. The Administrative Law Judge shall issue the Initial Decision no later than forty-five (45) days after the close of the hearing. The Initial Decision shall include findings of fact and conclusions of law affirming, modifying, or reversing the action of the appointing authority.

**Part A. Section VII. General Provisions**

Board Rule 8-40. The Colorado Rules of Civil Procedure and Evidence. To the extent practicable, the Colorado Rules of Civil Procedure ("C.R.C.P.") and the Colorado Rules of Evidence ("C.R.E.") apply to the proceedings at the Board.

- A. In the event the C.R.C.P. or the C.R.E. are inconsistent with this Chapter 8, Resolution of Appeals and Disputes, the Board Rules control.
- B. Unless the context requires otherwise, whenever the terms "court," "judge," or "jury" appear in the C.R.C.P. or the C.R.E., the terms are construed to mean the Board or an Administrative Law Judge.
- C. An Administrative Law Judge has the discretion to admit evidence not admissible under C.R.E., as permitted by law.

Board Rule 8-41. Representation.

- A. During the Step Two grievance process, an employee may have a representative that may or may not be an attorney. During all other proceedings under this Chapter 8, Resolution of Appeals and Disputes, Part A, an individual may only appear on their own behalf, or by an attorney authorized to engage in the practice of law in Colorado.

- B. An attorney representing a party shall file an entry of appearance or sign a pleading. The entry of appearance shall contain the attorney's name, mailing address, email address, telephone number, attorney registration number, and the identity of the party for whom the appearance is made.
- C. In the event a party is not represented, counsel for the represented party is responsible for coordinating with the unrepresented party for the purpose of scheduling conferences, obtaining hearing dates, and preparing any joint filings or stipulations.
- D. Attorneys may provide limited representation to Complainants so long as the representation complies with the Colorado Rules of Professional Conduct and the Colorado Rules of Civil Procedure.

Board Rule 8-42. Current Information. Anyone who files an appeal or who enters an appearance shall keep the Board informed of their current email address, mailing address and telephone number. Failure to provide the Board with current information may result in dismissal.

Board Rule 8-43. Hearing to Determine Jurisdiction. If the Board's jurisdiction is in doubt, the Administrative Law Judge may set a hearing limited to determining whether the Board has jurisdiction.

Board Rule 8-44. Consolidation of Appeals.

- A. If an applicant or employee files more than one appeal with the Board, the Board may consolidate the appeals into a single proceeding.
- B. Parties may file a motion requesting consolidation of appeals. The Board may also consolidate appeals on its own motion.
- C. An Administrative Law Judge will not consolidate appeals unless:
  - 1. The appeals relate to the same or closely related facts;
  - 2. Consolidation will likely result in greater efficiencies for the parties and for the Board;
  - 3. Consolidation will not significantly delay the Board's resolution of the earlier filed appeal; and
  - 4. Consolidation will not unduly prejudice any party.

Board Rule 8-45. Informal Requests for Information. Parties may informally request information from the opposing party. Informal requests are not subject to oversight by the Board or by an Administrative Law Judge. Informal requests may be made at any time.

Board Rule 8-46. Privilege Log. If a party asserts a privilege relative to any document or materials, that party shall provide the opposing party a privilege log describing the title, author, date, and subject matter of the document or material, along with the legal basis for asserting the privilege.

Board Rule 8-47. Motions.

- A. Motions. Motions are a formal request to the Board to enter an order.
- B. Deadline for Responding to a Motion. Unless ordered otherwise by an Administrative Law Judge, the responding party has ten (10) days after receipt of a motion to file a response.

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- C. Replies. Unless ordered otherwise by an Administrative Law Judge, the moving party may not file a reply in further support of a motion.
- D. Length of Motions and Responses. Unless ordered otherwise by an Administrative Law Judge, motions and responses are limited to ten (10) pages. This page limit does not include the case caption, signature block, certificate of service and any exhibits.
- E. Duty to Confer, Certification of Conferral, and Summary of the Conferral.
1. Prior to filing a motion, the party filing the motion shall confer in good faith with the opposing party about the motion.
  2. The first paragraph of a motion shall contain a certification that the party filing the motion has conferred in good faith with the opposing party about the motion.
  3. The first paragraph of the motion shall state if the motion is opposed or unopposed.
  4. If no conferral has occurred, the first paragraph of the motion shall state the reasons for not conferring and describe all efforts to confer.
  5. If the parties agree to a motion's request, the caption on the motion shall include the word "Unopposed."
  6. A good faith conferral requires the parties to initiate efforts to confer long enough before the anticipated filing to engage in a meaningful communication.
- F. Legal Authority. Motions shall include the legal arguments and authorities that support the motion.
- G. No Oral Argument. Unless ordered otherwise by an Administrative Law Judge, motions will be determined based upon the information in the written motion and response.
- H. Time-Sensitive Motions. A party filing a time-sensitive motion may request an expedited ruling. The Administrative Law Judge exercises sole discretion of whether to issue an expedited ruling.
- I. Stipulations for Extensions of Time. Stipulations between the parties for extensions of time are not controlling unless there is an order granting the extension of time.
- J. Failure to Respond to a Motion. The Administrative Law Judge may grant a party's motion if the opposing party does not timely respond to the motion.
- K. Motions for Reconsideration. The parties are discouraged from filing motions for reconsideration. If the Administrative Law Judge does not rule on a motion to reconsider within twenty-one (21) days from the filing of the motion, it is denied
- Board Rule 8-48. Modifications.
- A. For good cause shown, the Board may modify or waive the requirements of this Chapter 8, Resolution of Appeals and Disputes, Part A.
  - B. If seeking a modification, parties shall comply with the requirements for filing motions set forth in Chapter 8, Resolution of Appeals and Disputes, Part A.

- C. Any motion to extend a deadline shall be filed prior to the deadline.

Board Rule 8-49. Public Nature of Proceedings. All proceedings before the Board are open to the public except that an Administrative Law Judge may conduct a hearing in private if good cause is established.

Board Rule 8-50. Security. For good cause, a party may file a motion requesting security during any hearings or Board meetings. If the motion is granted, the party requesting security may be charged the reasonable costs for providing such security.

Board Rule 8-51. Sanctions.

- A. Failure to comply with the provisions in this Chapter 8, Resolution of Appeals and Disputes, Part A, may result in sanctions as determined at the discretion of an Administrative Law Judge.
1. Failure, without good cause, of a party to appear at a hearing may result in judgment for the opposing party.
  2. During the Preliminary Review process, (a) if a Complainant fails to file a complete and timely Information Sheet, the matter may be dismissed; and (b) if a Respondent fails to file a complete and timely Information Sheet, the Board will decide whether to grant a hearing based solely upon the information provided by the Complainant.
- B. Upon final resolution of a proceeding under this Chapter 8, Resolution of Appeals and Disputes, Part A, attorney fees and costs may be assessed against a party if the Board finds that the personnel action from which the proceeding arose, or the appeal of such action was frivolous, in bad faith, malicious, a means of harassment, or was otherwise groundless.
1. Frivolous means that no rational argument based on the evidence or law was presented.
  2. In bad faith, malicious, or as a means of harassment means that the appeal or defense was pursued to annoy or harass, made to be abusive, stubbornly litigious, or disrespectful of the truth.
  3. Groundless means that despite having a valid legal theory, a party fails to offer or produce any competent evidence to support the theory.
- C. Attorney fees may also be assessed against a party as permitted by law.
- D. Pursuant to § 24-50.5-104(2), C.R.S. attorney fees shall be assessed against the department if the Board finds a violation of the Whistleblower Act.
- E. Any party seeking sanctions or attorney fees shall file and serve a motion within ten (10) days of:
1. The alleged failure to comply with the provisions in this Chapter 8, Resolution of Appeals and Disputes, Part A;
  2. When the party knows or reasonably should have known of the alleged abuse giving rise to the request for fees;

3. A final order of an Administrative Law Judge, including an order of dismissal; or
  4. An Initial Decision.
- F. Anyone potentially affected by a motion for sanctions or for attorney fees may request a hearing. The Administrative Law Judge may hold a hearing if the judge determines that a hearing will materially assist in deciding the motion.

**Part A. Section VIII. State Personnel Board Review of Initial Decisions and Other Final Orders Issued by an Administrative Law Judge**

Board Rule 8-52. General Provisions.

- A. The purpose of this Section is to provide the procedures for the Board to review Initial Decisions and other final orders issued by an Administrative Law Judge.
- B. The first party to request the Board to review an Initial Decision or other final order is the "Appellant." The other party is the "Appellee."
- C. Except as provided in this Section, the parties shall follow the filing requirements in Chapter 8, Resolution of Appeals and Disputes, Part A.

Board Rule 8-53. Procedures for Initiating a Request for the Board to Review an Initial Decision or Other Final Order Issued By an Administrative Law Judge.

- A. Designation of Record.
  1. The record may include transcripts of any proceedings, documents that the parties have filed during the course of the proceedings, exhibits, and any orders issued by an Administrative Law Judge.
  2. The Appellant shall file a Designation of Record with the Board no later than twenty (20) days from the date of the certificate of service of the disputed Initial Decision or other final order. The Appellant's Designation of Record shall specify all portions of the record that the Appellant deems necessary and relevant.
  3. Within ten (10) days from Appellant's Designation of Record, the Appellee may file an additional Designation of Record specifying any other portions of the record that the Appellee deems necessary and relevant.
  4. If neither party designates an item to be included in the record, then the Board will not consider that item as part of its review.
  5. Any party who designates a transcript as part of the record shall arrange for preparation of the transcript directly with a neutral and certified court reporter.
  6. A party designating a transcript shall file the transcript with the Board within fifty-nine (59) days from the date Appellant files the Designation of Record. If no transcript is filed by the deadline, the record will not include the transcript.
  7. Any transcript to be included as part of the record shall be signed and certified by the court reporter who prepared the transcript.

- B. Notice of Request for Board Review.
1. The party requesting the Board to review an Initial Decision or other final order shall file a Notice of Request for Board Review.
  2. The Notice of Request for Board Review shall state the basis for requesting the Board review, including the disputed findings of fact and/or conclusions of law.
  3. The Appellant shall file the Notice of Request for Board Review within thirty (30) days from the date of the certificate of service of the disputed order.
- C. Payment. A party requesting Board review of an Initial Decision or other final order shall submit a \$5.00 payment for the certification of the record at the time the party files the Notice of Request for Board Review. This amount does not include the cost of a transcript, which needs to be paid directly to the court reporter by the party.
- D. Certification of Record. The Board shall certify the record within sixty (60) days from the date the record is designated.

Board Rule 8-54. Briefing. Upon certification of the record, the parties shall file written arguments for the Board to consider as part of its review.

- A. Briefing Schedule.
1. The Appellant shall file an opening brief within twenty (20) days from the certification of record.
  2. The Appellee shall file an answer brief within ten (10) days from service of the opening brief.
  3. The Appellant may file a reply brief within five (5) days from service of the answer brief.
  4. If both parties request Board review, the parties shall file simultaneous briefs using the above briefing deadlines.
- B. Extensions of Time. No motions for extension of time will be granted unless the parties are able to complete all briefing at least fourteen (14) days before the Board meeting related to the briefs.
- C. Page Limit. Briefs are limited to ten (10) pages. This page limit does not include the case caption, table of contents, tables of citations, signature block, certificate of service, and exhibits.
- D. Briefs shall conform to Chapter 8, Resolution of Appeals and Disputes, Part A, Section I, with respect to margins, font size, and other requirements.
- E. Copies. Parties shall file an original and seven copies of their briefs with the Board.

Board Rule 8-55. Board Review.

- A. Review Date. The Board will review and render a written decision within ninety (90) days from the certification of record.

- B. Materials Considered in the Board Review. In reviewing an Initial Decision or other final order, the Board will only consider:
1. The disputed order; and
  2. The items included in the certified record. If the certified record does not contain a transcript of the evidentiary hearing, the Board is bound by the findings of fact in the Initial Decision.
- C. Oral Argument. In general, no oral argument is permitted.

Board Rule 8-56. Any party appealing to the Colorado Court of Appeals shall serve a copy of the Notice of Appeal on the Board at the time of filing the notice.

**Part A. Section IX. Settlement Process**

Board Rule 8-57. Parties are encouraged to resolve disputes at the lowest level and as informally as possible. Parties may settle at any time. Parties may agree to use alternative dispute forms other than the settlement process in this Section.

Board Rule 8-58. Scheduling Settlement Conferences. Subsequent to filing an appeal with the Board, any party may ask the Board to facilitate a settlement conference.

- A. In most situations, the Board will assign an Administrative Law Judge to serve as the settlement facilitator. The Administrative Law Judge who serves as a settlement facilitator shall be someone other than the Administrative Law Judge assigned to adjudicate the dispute.
- B. If one party requests a settlement conference, the opposing party shall appear at least once at a conference and attempt in good faith to settle the matter.
- C. The Administrative Law Judge assigned to adjudicate the dispute may waive the requirement of a settlement conference upon good cause shown.
- D. The Administrative Law Judge assigned to adjudicate the dispute may require a settlement conference even if the parties do not request one.
- E. A settlement facilitator may determine that settlement discussions are futile. The settlement facilitator may terminate the settlement conference at the facilitator's sole discretion.

Board Rule 8-59. Provisions Relating to Settlement Conference.

- A. Unless information reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child, settlement discussions are confidential. Therefore, the parties shall keep confidential all communications made in connection with a settlement discussion.
- B. Neither party may call a settlement facilitator as a witness in any legal proceedings relating to the dispute. Neither party may contact a settlement facilitator for information.
- C. Settlement communications are not discoverable or admissible at the hearing. However, this does not preclude admission of facts or evidence known to the parties prior to the settlement conference or discovered independently by the parties.

- D. All notes taken by a settlement facilitator are kept in a separate area that is not accessible to the Administrative Law Judge assigned to adjudicate the dispute. The settlement facilitator shall destroy the notes once the settlement process has concluded.
- E. The settlement facilitator shall not disclose discussions at the settlement conference to the Administrative Law Judge assigned to adjudicate the dispute.
- F. The parties participating in a settlement conference shall have someone present at the conference with authority to resolve the dispute.
- G. In general, only the parties and their legal representatives may participate in a settlement conference. However, the settlement facilitator may permit a third party to attend if that will facilitate the conference. A party shall provide at least two (2) business days notice if that party wishes to invite a third party to participate in the settlement conference.
- H. Any settlement agreement reached shall be put in writing and reviewed by both parties prior to signature.

Board Rule 8-60. Upon reaching a signed settlement agreement, the parties shall file a joint or unopposed motion with the Board requesting a dismissal.

Board Rule 8-61. Alleged Breach of a Settlement Agreement.

- A. If either party contends the opposing party has not complied with the terms of a settlement agreement, the party may seek judicial review or other remedies as set forth in the parties' agreement.

Rules 8-62 through 8-69 Intentionally left blank. (04/01/2021)

**Chapter 8, Part B. Director's Review of Appeals.**

- 8-70. Chapter 8, Resolution of Appeals and Disputes, Part B, contains the Director's Rules that govern Director's Appeals and includes the following:
- Section I: Filing Appeals with the Director.
  - Section II: Resolution of Director's Appeals.
- 8-71. Chapter 8, Resolution of Appeals and Disputes, Part B, Director's Review of Appeals, applies to applicants to and employees of the state personnel system. Chapter 8, Resolution of Appeals and Disputes, Part B, does not apply to positions or individuals outside of the state personnel system.
- A. The Director's Review of Appeals is an impartial process.
1. The Director's Review of Appeals process is not a grievance and as such, no party has an absolute right to legal representation during the process, but may have an advisor present. The parties are expected to represent and speak for themselves.
- 8-72. All Director's Appeals brought before the Director may be resolved informally. If a remedy is granted while a Director's Appeal is pending, it shall be deemed moot and dismissed with prejudice.
- 8-73. Retaliation against any person involved in any Director's Appeal process is prohibited.
- 8-74. Notice of the Director's Appeal Rights. Applicants and employees shall be notified by the department, in writing, of any rights to appeal a procedure used in a final department decision regarding selection. The notice shall include a statement setting forth the time limit for filing an appeal with the Director, the address to submit the filing, the requirement that the appeal shall be in writing, and the availability of the Consolidated Appeal/Dispute Form.

**Part B. Section I. Filing Appeals with the Director**

- 8-75. The Director's Appeal Filing. All appeals in the state personnel system are administratively processed through the Board using the Consolidated Appeal/Dispute Form. Appeals are forwarded with notice that the appeal has been dismissed by the Board and given to the Director for review.
- A. The Director's Appeal. The Director's Appeal shall use the Consolidated Appeal/Dispute Form found on the DPA/Division of Human Resources or the Board's website.
- B. Contents of the Director's Appeal. The Director's Appeal contains the information according to Chapter 8, Resolution of Appeals and Disputes, Part A, Section I.,
- C. Filing the Director's Appeal. The Director's Appeal shall be filed according to Chapter 8, Resolution of Appeals and Disputes, Part A, Section I.
- D. The filing of a timely Director's Appeal must meet the following criteria:
1. The Director's Appeal shall be filed with the Board within ten (10) days from when the employee knew or should have known of the alleged improper action. The first day of the count is the day after the date on the department's notification and each calendar day thereafter.

2. If a deadline falls on a weekend, official state holiday, or by governor order the deadline is extended to the next regular business day.
  3. Any filing via facsimile or email that is received by the Board by 5:00 p.m. Colorado time shall be deemed to have been filed on that date.
  4. If the filing is through mail by the United States Postal Services, the date of filing is the postmark.
  5. If the filing is hand delivered to the Board, the date stamp is the official date of filing.
  6. Failure to timely file an appeal may result in the Director losing jurisdiction over the matter and the Director's Appeal being dismissed.
- 8-76. Only an applicant or a certified employee ("Appellant") who is directly affected as a result of an action by a department ("Respondent") may appeal to the Director. The following procedural events shall be reviewed by the Director:
- A. An allocation of an individual position occupied by a certified employee to a lower pay grade;
  - B. An applicant's objection of their removal from consideration from selection, which includes the minimum qualification review and comparative analysis process.
  - C. Other processes under the authority of the Director as a general matter of administration of the state personnel system or as mandated by law. These include alleged violations to the Fair Labor Standards Act and Family Medical Leave Act.

8-77. The Director shall not substitute their judgement for that of the appointing authority. The following procedural events are not subject to Director's Appeals and shall not be reviewed by the Director:

#### 8-77.1 Summary of Chapter 8, Part B

The summary is illustrative only. The language in the Director's Procedures are controlling. There are many parts of Chapter 8 that are not included in this summary.

<b>Filing with the State Personnel Director</b>
An employee wanting to file an appeal with the State Personnel Director shall follow the filing procedures in <b>Chapter 8, Part A, Section I</b> . The appeal shall use the standard Consolidated Appeal/Dispute Form found on the State Personnel Board's website. Appeals are timely if received by the State Personnel Board or postmarked no later than ten (10) days after receipt of the written notice of the action, or if no notice was required, no later than ten (10) days after the employee knew or should have known of the improper action.
<b>Types of appeals in Chapter 8, Part B</b>
Chapter 8, Part B includes the procedures for resolving appeals within the State Personnel Director's Justification. Appeals proceed depending on the nature of the employee's claim. In general, the State Personnel Director reviews procedural events.
<b>1. State Personnel Director's Appeals</b>

Only an applicant or a certified employee ("Appellant") who is directly affected as a result of an action by a department ("Respondent") may appeal to the State Personnel Director under Chapter 8, Part B. Director's Review of Appeals. These events include:

- An allocation of an individual position occupied by a certified employee to a lower pay grade;
- An applicant's objection of their removal from consideration from selection; and
- Other processes under the authority of the Director as a general matter of administration include alleged violations to the Fair Labor Standards Act and Family Medical Leave Act.

**Part B. Section I. Filing Appeals with the Director**

**2. Exclusions**

The State Personnel Director shall not review actions filed under the jurisdiction of the State Personnel Board which include grievances, discipline or any actions that impact pay, status, or tenure, or claims that allege whistleblower, discrimination or retaliation. Refer back to Chapter 8, Part A, the State Personnel Board's summary.

The State Personnel Director shall not review the following actions:

- Hiring once an applicant has advanced to referral and an applicant received an offer to interview;
- Personal services contracts;
- Job evaluation system and actions;
- Disciplinary actions;
- Any action that adversely affects pay, status, or tenure;
- Performance management disputes that result in a disciplinary action;
- In-range salary movements;
- Issues pertaining to leave sharing;
- Discretionary pay differentials; and
- Hazardous duty premium pay.

8-78. Confidentiality of Director's Appeal Materials. Examination data and documents will be stored confidentially and only released if a judicial review is filed or otherwise required by law.

**Part B. Section II. Resolution of Director's Appeals**

8-79. The Director's Appeal Decision. The Director shall issue a written decision no later than ninety (90) days after the Director receives a referral of the matter from the Board or notice that the appeal has been dismissed by the Board. Both parties, Appellant and Respondent, will receive a copy of the Director's final decision.

- A. The Director may overturn a decision by a department only if found to be arbitrary, capricious, or contrary to rule or law.
- B. Failure by the Director to issue a decision within the ninety (90) day time limit will cause the Director to adopt the department's decision.
- C. The matter appealed must be resolved within the ninety (90) days, after which the Director loses jurisdiction. The Director does not have the authority to extend the time period.

8-80. An Appellant may withdraw a Director's Appeal at any time prior to the Director issuing a final decision. If an Appellant withdraws a Director's Appeal, it will be considered moot and dismissed with prejudice.

8-81. In the event that an employee with a pending Director's Appeal separates from the state personnel system, the Director's Appeal is dismissed with prejudice.

- 8-82. Pursuant to § 24-50-112.5(4)(e), C.R.S., the Board has discretionary jurisdiction to review final decisions of the appointing authority regarding alleged violations of the comparative analysis process after the Director issues their final decision.

**Chapter 8, Part C. Department Internal and Director's External Performance Management Disputes.**

- 8-83. Chapter 8, Resolution of Appeals and Disputes, Part C, contains the Director's Rules that govern Department Internal and Director's External Dispute Resolution for Performance Management and includes the following:
- Section I: Filing an Internal Dispute for Performance Management with the Department.
  - Section II: Resolution of an Internal Dispute for Performance Management with the Department.
  - Section III: Filing an External Dispute for Performance Management with the Director.
  - Section IV: Resolution of an External Dispute for Performance Management with the Director.
- 8-84. Chapter 8, Resolution of Appeals and Disputes, Part C, Department Internal and Director's External Performance Management Disputes, applies to employees of the state personnel system. Chapter 8, Resolution of Appeals and Disputes, Part C, does not apply to individuals outside of the state personnel system.
- A. Throughout Chapter 8, Resolution of Appeals and Disputes, Part C, "Director's External Dispute" refers to performance management disputes that are reviewed by the Director.
- B. The Department Internal and Director's External Performance Management Disputes are impartial processes.
1. The Department Internal and Director's External Performance Management Disputes processes are not grievances or appeals and as such, no party has an absolute right to legal representation during the processes, but may have an advisor present. The parties are expected to represent and speak for themselves.
  2. The scope of authority of those individuals making final decisions throughout the dispute resolution process for performance management is limited to reviewing the facts surrounding the current action, within the limits of the department's performance management program.
  3. Individuals making final decisions shall not substitute their judgment for that of the rater, reviewer, or the department's dispute resolution decision maker if an issue is being considered. Further, these individuals shall not render a decision that would alter a department's performance management program.
- 8-85. All Director's External Performance Management Disputes brought before the Director may be resolved informally. If a remedy is granted while a Director's External Performance Management Dispute is pending, it shall be deemed moot and dismissed with prejudice.
- 8-86. Retaliation against any person involved in any Department Internal or Director's External Performance Management Dispute process is prohibited.

8-87. Notice of Department Internal and Director's External Performance Management Dispute. The department's performance management program shall include the department's internal and Director's external processes and scope to dispute an individual's annual performance evaluation.

8-87.1 Summary of Chapter 8, Part C

The summary is illustrative only. The language in the Director's Procedures are controlling. There are many parts of Chapter 8 that are not included in this summary.

<b>Filing with the State Personnel Director</b>
An employee wanting to file a performance dispute with the State Personnel Director shall follow the filing procedures in <b>Chapter 8, Part A, Section I.</b> The appeal shall use the standard Consolidated Appeal/Dispute Form found on the State Personnel Board's website. Disputes are timely if received by the State Personnel Board or postmarked no later than five (5) days after receipt of the written notice of the action, or if no notice was required, no later than five (5) days after the employee knew or should have known of the improper action.
<b>Types of performance disputes in Chapter 8, Part C</b>
Chapter 8, Part C includes the procedures for resolving external performance disputes by the State Personnel Director. Disputes proceed depending on the nature of the employee's claim. In general, the State Personnel Director reviews procedural events outlined in the department's performance management programs.
<b>1. State Personnel Director's External Performance Disputes</b>
Only an applicant or a certified employee ("Appellant") who is directly affected as a result of an action by a department ("Respondent") may file an external dispute with the State Personnel Director under Chapter 8, Part C. Department Internal and Director's External Performance Management Disputes. These events include: <ul style="list-style-type: none"><li>• The individual final overall performance evaluation, including lack of a final overall evaluation; and</li><li>• Application of a department's performance management program to the individual employee's final overall evaluation.</li></ul>
<b>Part C. Section I: Filing an Internal Dispute for Performance Management with the Department.</b>
<b>2. Exclusions</b>
The State Personnel Director shall not review actions filed under the jurisdiction of the State Personnel Board which include grievances, discipline or any actions that impact pay, status, or tenure, or claims that allege whistleblower, discrimination or retaliation.  The State Personnel Director shall not review the following actions: <ul style="list-style-type: none"><li>• The content of a department's performance management program;</li><li>• Matters related to the funds appropriated; and</li><li>• The performance evaluations and merit pay of other employees.</li></ul>

8-88. Only a certified employee, who is directly affected as a result of an action by a department may file a Director's External Dispute. Only the following procedural events shall be reviewed by the Director:

- A. The individual final overall performance evaluation, including lack of a final overall evaluation; and
- B. The application of a department's performance management program to the individual employee's final overall evaluation.

- 8-89. The following performance management matters are not disputable:
- A. The content of a department's performance management program;
  - B. Matters related to the funds appropriated; and
  - C. The performance evaluations and merit pay of other employees.

8-90. Every effort shall be made by the parties to resolve the issue at the lowest possible level in a timely manner before initiating the Director's External Dispute process.

**Part C. Section I: Filing an Internal Dispute for Performance Management with the Department.**

8-91. Internal Stage. The first stage is the department internal dispute resolution process. Each department shall communicate and administer a detailed internal dispute resolution process that complies with the requirements of, and is approved in advance by, the Director. A description of the process shall be communicated to all department employees through the department's performance management plan and shall include the following elements.

- A. The time limits and the process for filing a written request for review of the issue(s) throughout the dispute resolution process.
- B. The appointing authority at the department who is the final decision maker unless it is delegated in writing and publicized in advance. Employees shall be notified of the authorized decision maker for their disputes.
- C. The time limits for issuing the final written department decision.
- D. Any other specific requirements established by the Director.

**Part C. Section II: Resolution of Internal Dispute for Performance Management with the Department.**

8-92. Internal Stage Conclusion. A department's decision on issues involving an individual performance evaluation concludes at the internal stage and no further internal recourse is available.

- A. The Director's External Dispute Notice. For issues disputable at the external stage, the department shall give written notice to the employee.
  - 1. This notice shall include a statement that the deadline for filing an external performance management dispute to the Director is five (5) days from the date of receipt of the notice, the Board's physical address, email address, website, telephone and facsimile numbers, the requirement that the external performance dispute shall be in writing, and the requirement to include copies of the individual's annual performance evaluation, original written dispute and the department's final decision and the availability of the Consolidated Appeal/Dispute Form.

**Part C. Section III: Filing External Dispute for Performance Management with the Director.**

8-93. The Director's External Dispute Process. This external stage is administered by the Director. Only the issue(s) as originally presented in writing to the department during the department's internal process shall be considered during the Director's external performance management dispute resolution process.

- 8-94. The Director's External Dispute Filing. All external disputes for performance management in the state personnel system are administratively processed through the Board using the Consolidated Appeal/Dispute Form. External disputes for performance management are forwarded immediately to the Director for review.
- A. The Director's External Dispute. The Director's External Dispute shall use the Consolidated Appeal/Dispute Form found on the DPA/Division of Human Resources or the Board's website.
  - B. Contents of the Director's External Dispute. The Director's External Dispute contains the information according to Chapter 8, Resolution of Appeals and Disputes, Part A, Section I.
  - C. Filing the Director's External Dispute. The Director's External Dispute shall be filed according to Chapter 8, Resolution of Appeals and Disputes, Part A, Board Rules for Appeals, Section I.
  - D. The filing of a timely Director's External Dispute must meet the following criteria:
    - 1. The Director's External Dispute shall be filed with the Board within five (5) days from when the employee received the final department decision regarding the internal dispute. The first day of the count is the day after the date on the department's notification and each calendar day thereafter.
    - 2. If a deadline falls on a weekend, official state holiday, or by governor order the deadline is extended to the next regular business day.
    - 3. Any filing via facsimile or email that is received by the Board by 5:00 p.m. Colorado time shall be deemed to have been filed on that date.
    - 4. If the filing is through mail by the United States Postal Services, the date of the filing is the postmark.
    - 5. If the filing is hand delivered to the Board the date stamp is the official date of the filing.
    - 6. Failure to timely file an appeal may result in the Director losing jurisdiction over the matter and the Director's External Dispute being dismissed.

**Part C. Section IV: Resolution of External Dispute for Performance Management with the Director.**

- 8-95. The Director's External Dispute Authority. The Director's authority regarding final decisions on performance management disputes is limited to reviewing the facts surrounding the current action, within the limits of the department's performance management program.
- A. If the department has failed to render a final decision, the dispute will be remanded back to the department to issue a final decision to the employee.
  - B. The Director shall not substitute their judgment for that of the rater, reviewer, or the department's dispute resolution decision maker.
  - C. The Director's review will be to ensure the procedures outlined in the department's performance management program were followed.

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- 8-96. The Director's External Dispute Decision. The Director shall issue a written decision that is final and binding within thirty (30) days from receipt of filing.
- A. In reaching a final decision that concludes the department's performance management program was not followed, the Director has the authority to instruct a department to:
    - 1. Follow a department's performance management program;
    - 2. Correct an error; or
    - 3. Reconsider an individual performance plan or final overall evaluation.
  - B. The Director may also require the department to use other appropriate conflict resolution methods.
  - C. The Director shall not render a decision that would alter a department's performance management program.
- 8-97. An employee may withdraw a Director's External Dispute at any time prior to the Director issuing a final decision. If an employee withdraws a Director's External Dispute, it will be considered moot and dismissed with prejudice.
- 8-98. In the event that an employee with a pending Director's External Dispute separates from the state personnel system, the Director's External Dispute is dismissed with prejudice.
- Rule 8-99 Intentionally left blank. (04/01/2021)

**Chapter 8. Part D. Director's Review of Coverage Designation Disputes.**

- 8-100. Chapter 8, Resolution of Appeals and Disputes, Part D, contains the rules that govern the Director's Coverage Designation Disputes and includes the following:
- Section I: Filing Coverage Designation Disputes with the Director.
  - Section II: Resolution of Director's Coverage Designation Disputes.
- 8-101. Chapter 8, Resolution of Appeals and Disputes, Part D, Director's Review of Coverage Designation Disputes, applies to decisions about whether certain employees are appropriately designated as covered and non-covered employees under the Colorado Partnership for Quality Jobs and Services Act. Chapter 8, Resolution of Appeals and Disputes, Part D, does not apply to challenges to the exemption of an employee from the state personnel system.
- A. Chapter 8, Resolution of Appeals and Disputes, Part D, only applies to disputes regarding the designation of covered and non-covered employees under the Colorado Partnership for Quality Jobs and Services Act, § 24-50-Part 11, C.R.S., and specifically § 24-50-1102(3)(a)-(h). The term "Director's Coverage Designation Dispute" refers to these disputes. A designation of covered or non-covered is based on the individual's position description and job duties.
  - B. Only the department's designated Labor Relations representative or the certified employee organization can request a Director's Coverage Designation Dispute using the Covered/Non-covered Employee Designation Dispute Form found on the Department of Personnel and Administration website.
  - C. Nothing in Chapter 8, Resolution of Appeals and Disputes, Part D, is intended to preclude an employee, department, or certified employee organization from asserting an employee's status as covered or non-covered under the Colorado Partnership for Quality Jobs and Services Act as a defense in an Unfair Labor Practice charge.
- 8-102. Every reasonable effort shall be made by the parties to resolve the issue at the lowest possible level in a timely manner before initiating the Director's Coverage Designation Dispute process.
- 8-103. All Director's Coverage Designation Disputes brought before the Director may be resolved informally or withdrawn. If a dispute is resolved informally between the parties or withdrawn while a Coverage Designation Dispute is pending, the parties shall promptly notify the Director and the dispute shall be considered moot and dismissed with prejudice.
- 8-104. Retaliation against any person for their involvement in any Director's Coverage Designation Dispute process is prohibited.
- 8-105. Confidentiality of Supporting Documents. Supporting documents shall be stored confidentially and only released if a review is filed with the Colorado Department of Labor and Employment, Division of Labor Standards and Statistics or as otherwise required by law.

**Part D. Section I. Filing Coverage Designation Disputes with the Director.**

- 8-106. The Coverage Designation Dispute Process. Only the issues identified in the Covered/Non-covered Employee Designation Dispute Form shall be considered by the Director.

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- A. Internal Stage. The first stage is the department's internal dispute resolution process. Each department shall communicate and administer the internal dispute resolution process established by the Director.
1. To initiate the department's internal dispute resolution process, the employee shall notify the employee's supervisor or other authorized person in writing. Such notification may be verbal, but must communicate that the employee is initiating the internal coverage designation dispute process.
  2. A discussion between the employee and the supervisor or other authorized person shall occur within ten (10) days of the employee initiating the department's internal dispute resolution process.
    - a. The employee may bring a representative, that may or may not be an attorney, to the discussion.
    - b. A representative, that may or may not be an attorney, may participate and speak during the discussion but the employee is expected to answer any questions and actively participate.
  3. The department shall provide a written decision to the employee no later than twenty-five (25) days after the discussion.
- 8-107. Notice of Director's Coverage Designation Dispute Rights. The department's designated Labor Relations representative and the certified employee organizations shall be notified by the department, in writing, of the right to dispute a department's final decision of the internal dispute regarding a covered designation.
- A. The notice shall include:
1. A statement setting forth the physical address, email address, website, telephone and facsimile numbers of the Director;
  2. The requirement that the dispute shall be in writing;
  3. The location of the Covered/Non-covered Employee Designation Dispute Form;
  4. Filing instructions for supporting documentation; and
  5. The requirement to include copies of the original written coverage dispute and the department's final decision of the internal dispute.
- 8-108. The Director's Coverage Designation Dispute Stage. This external stage is administered by the Director. Only the issues in the original written coverage dispute filed with the department's internal dispute process shall be reviewed by the Director.
- A. The Director's Coverage Designation Disputes shall use the Covered/Non-covered Employee Designation Dispute Form.
- 8-109. Where to file. The Covered/Non-covered Employee Designation Dispute Form and other documents may be filed by hand delivery, United States Postal Service, commercial delivery service, facsimile, or via email.
- A. The physical address for filing is State Personnel Director, 1525 Sherman Street, 5th Floor, Denver, Colorado 80203.
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1. Normal business hours for the Director are from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for official state holidays or days that state offices in Denver are closed due to weather or safety or by governor order.
- B. The facsimile number is 303-866-2021. Facsimile filings may not exceed ten (10) pages.
- C. Filings via email.
  1. The email address for the Designation Disputes is DPA\_LaborRelations@state.co.us.
  2. The subject line for the filing via email shall include:
    - a. Department;
    - b. Position Number;
    - c. Case number (if a new Designation Dispute, write "New Designation Dispute"); and
    - d. The phrase "Electronic Filing."
    - e. Examples: "Department of State AAA12345 (2021-LR-0000) Electronic Filing" or "Department of State AAA12345 (New Designation Dispute) Electronic Filing."
  3. The Covered/Non-covered Employee Designation Dispute Form and any relevant documents must be attached to the email as a PDF document. The Director will only consider the contents of the attached documents. The Director will not consider information in the text of the email. The email is not a filing; rather the email is a method for parties to file something with the Director. Nothing in this paragraph precludes the Director from requesting the parties to submit additional documents.
  4. As with any filing, the attached filings shall be signed. This can be done by signing the document and scanning the document with the signature. This can also be done by writing or typing "/s/" followed by the filer's full name on the signature block line, so long as the person filing the document signs a paper form of the document and makes that form available for situations where the hearing officer might seek verification of the signature.
- D. Size and format of filings. All documents filed with the Director shall be prepared as follows:
  1. 8-1/2" x 11" page size, on plain, white paper (recycled paper preferred);
  2. Black type or print;
  3. No less than twelve (12) point font, excluding footnotes. Footnotes shall be no less than nine (9) point font;
  4. Margins of at least one inch (1") at the top, left, right, and bottom of each page; and
  5. If single-spaced, there shall be a blank line between each paragraph.

**Part D. Section II. Resolution of Director's Coverage Designation Dispute.**

- 8-110. The Director has authority to determine whether an employee was properly designated as covered or non-covered under the Colorado Partnership for Quality Jobs and Service Act based on their position description and job duties.
- A. If the department has failed to render a final decision, the designation dispute will be remanded back to the department to issue a final decision to the employee and the certified employee organization.
  - B. The Director shall not substitute their judgment regarding the position description or job duties for that of the appointing authority. The Director may overturn the appointing authority's decision about whether the position is covered or not covered under the Colorado Partnership for Quality Jobs and Services Act.
  - C. The Director shall not render a decision that would alter an individual's position description or job duties.
- 8-111. The Director or designee shall issue a written decision within ninety (90) days from receipt of filing.
- 8-112. Any of the timeframes for completion of the dispute process may be waived or modified if agreed to in writing by both parties, including deferral of action to allow the parties a chance to resolve the issue.
- 8-113. Pursuant to § 24-50-1106(4), C.R.S., the Colorado Department of Labor and Employment, Division of Labor Standards and Statistics has jurisdiction to hear final decisions of the Director regarding whether certain employees are appropriately designated as covered or non-covered employees.
- 8-114. Once a decision by the Director is accepted or affirmed by the Colorado Department of Labor and Employment, Division of Labor Standards and Statistics, it is final unless permanent, material changes are made to the official position description.

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## **Chapter 9 Fair Employment Practices**

Authority for rules promulgated in this chapter is found in §24-34-402, C.R.S. Board rules are identified by cites beginning with "Board Rule".

### **General Principles**

Board Rule 9-1. It is to the benefit of the state to employ a diverse workforce that reflects the character of its general population to assist in providing effective services to citizens.

Board Rule 9-2. The state is committed to special efforts to increase representation of the population throughout all levels of the state personnel system. The state will continue to attract and retain qualified persons representing the population as future changes occur.

### **Discrimination**

Board Rule 9-3. Discrimination against any person is prohibited because of race, creed, color, gender (including sexual harassment), sexual orientation, national origin, age, religion, political affiliation, organizational membership, veteran's status, disability, or other non-job related factors. This applies to all employment decisions.

Board Rule 9-4. Standards and guidelines adopted by the Colorado Civil Rights Commission and/or the federal government, as well as Colorado and federal case law, should be referenced in determining if discrimination has occurred.

Board Rule 9-5. The state prohibits discrimination against any person, including members of the public, applicants and employees. Each department must notify applicants and employees of the policy prohibiting discrimination. Any means or method reasonably designed to clearly communicate the information may be used.

- A. Each department will notify applicants and employees of the name, business address, and telephone number of the ADA coordinator. Appointing authorities and employees should consult with their departmental ADA coordinator concerning what constitutes a disability, reasonable accommodation, and undue hardship.

Board Rule 9-6. If the Board finds that discrimination has occurred, it may order affirmative relief that the Board determines to be appropriate, including reinstatement or rehiring of employees, with or without back pay, front pay, and any other equitable relief the board deems appropriate. This does not prohibit settlement by the parties at any stage of the proceedings. This rule applies to claims accruing on or after January 1, 2015. (1/01/15)

9-7. Repeal (11/1/2019)

### **Disputes**

Board Rule 9-8. For any complaint on an action that violates the provisions of this chapter, refer to the "Dispute Resolution" chapter for further information.

## Chapter 10 Personal Services Agreements

Authority for rules promulgated in this chapter is found in §§24-50-501 through 514 (Part 5), C.R.S.

- 10-1. The Colorado Constitution does not specify the services that shall be performed by state employees and offers no guidance concerning criteria or mechanisms for delineating, enlarging, or reducing the state personnel system. The Director promulgates these rules to effectuate the labor policy established by the General Assembly in statute, balancing personal services contracting and the state personnel system. Contracts for personal services that create an independent contractor relationship are permissible if they satisfy the provisions of this chapter regarding the business case, the impact on the state personnel system, and contract process and requirements.
- 10-2. Determination of the Business Case. The threshold decision for entering into any personal services contract requires the department head to determine the business case based on accountability, cost, and quality.
- A. Consideration of accountability includes:
1. whether there are adequate safeguards to ensure that government authority is not improperly delegated;
  2. the extent to which the function requires direct daily control over individual workers in order to effectively establish and implement state policy regarding public health, welfare, peace, and safety;
  3. the extent to which the service can be provided through alternative means should the contractor fail to perform; and,
  4. the extent to which the department has sufficient resources and expertise to monitor, measure, and enforce performance of the contract.
- B. Consideration of cost includes an analysis in accordance with appropriate fiscal and procurement requirements, including the following, if applicable:
1. the extent to which the state will not realize the full value of, or recover the investment in, capital improvements or equipment;
  2. a comparison of state costs to the contract price, including any fixed and variable costs solely attributable to the particular function, as well as inspection, supervision, and monitoring;
  3. any price increases over the term of the contract; and,
  4. the difference between the state's and the contractor's contributions to employee health insurance, to ensure that projected state savings are not attributable to lower contractor costs of health insurance.
- C. Consideration of quality includes timeliness, functionality, durability, efficiency, contractor qualifications, flexibility, and any additional investment that yields greater effectiveness over the term of the contract.

- 10-3. Evaluation of Potential Impact on Certified Employees. In addition to the business case, the department head shall also evaluate the potential impact on the state personnel system. The following provisions apply depending on the nature of the contract and the statutory basis for approval.
- A. For purposes of determining whether a “service agreement” exists, in which the services are incidental to the purchase or lease of real or personal property, the department head shall consider whether the predominant purpose of the contract is the acquisition of labor, skills, creativity, or judgment, as opposed to acquisition of property.
  - B. If a contract involves equipment, materials, facilities, or maintenance and operational support services, the department head will consider the following:
    - 1. whether the demand for services in a particular geographic area is insufficient to justify investment in hiring permanent employees and purchasing capital equipment; and,
    - 2. whether it is impractical or cost effective for departments in a particular geographic area to share the costs and use permanent state employees to meet the total demand upon the state in that geographic area.
  - C. Services for persons in the physical or legal custody of the state are not “purchased services”.
  - D. A contract for personal services does not implicate the state personnel system if the department head determines that it is necessary to retain outside contractors to meet a labor demand that is for: (7/1/07)
    - 1. a temporary need for a specific task or result for a finite period of time. Such a contract shall state an ending date;
    - 2. an occasional need that is seasonal, irregular, or fluctuating in nature; or,
    - 3. an urgent need for immediate action to protect the health, welfare, or safety of people or property, or to meet an externally imposed deadline beyond the department’s control.
  - E. A department shall not use a succession of alternating temporary employment and personal services contracts in order to avoid either the timely creation or filling of permanent positions. A person may work as a state temporary employee nine (9) months and subsequently be retained as a contract worker by a different department. (3/30/13)
  - F. The department head shall approve each purchase order or contract for services acquired against an authorized price agreement unless the Director has approved the agreement in advance. A proposed acquisition shall comply with any conditions established by the Director regarding the use of a price agreement.
- 10-4. Contract Process and Requirements. All personal services contracts will conform to the following requirements regarding forms, reporting, and content.

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- A. As used in this chapter, contracts include any amendments but do not include acquisitions where a commitment voucher (e.g., state contract, purchase order) is not required by state fiscal rule, as such minor acquisitions of services do not implicate the state personnel system as a whole. Commitments to acquire services shall not be artificially divided to avoid review. Departments shall establish methods for retrieval of payment vouchers for personal services obtained within the scope of this exemption.
  - B. All personal services contracts shall be accompanied by supporting documents in the form prescribed by the Director.
  - C. Repealed (04/01/2020)
  - D. Consideration shall be given to contractors providing a preference for hiring veterans of military service in the following manner.
    - 1. In all solicitations for personal services, whether by competitive sealed bidding or competitive sealed proposals, as defined by law, any tie between offerors shall first be broken by awarding the contract to the offeror utilizing the greatest quantitative or numerical preference for veterans in hiring offeror's employees.
    - 2. Solicitations for personal services done by competitive sealed proposal may include as a scored criterion the extent and quality of any preference for veterans of military service given by offeror in the hiring of offeror's employees. The relative weight assigned such criterion for veteran's preferences in personal services contract solicitations, consistent with the preference given by the state personnel system to veterans in the hiring of state employees, shall not exceed five percent (5%).
  - E. In addition to contract provisions required by statute, personal services contracts shall contain:
    - 1. provisions addressing the consequences and potential mitigation of improper or failed performance by the contractor;
    - 2. clearly defined measurements of performance outcomes;
    - 3. sanctions for untimely or poor performance;
    - 4. the independent contractor clause as required within contract special provisions of state fiscal rules; and
    - 5. provisions concerning the orderly transition of functions between the department and the contractor during implementation or following termination of the contract, if applicable.
  - F. A personal services contract shall not create an employment relationship.
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## **Chapter 11 – State Benefit Plans**

Authority for rules promulgated in this chapter is found in State of Colorado Revised Statutes (C.R.S.) §§24-50-104, 24-50-109.5, and Part 6, the State of Colorado Constitution Article XII, Section 13, The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), and 26 U.S.C. 63, The Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Family Care Act (FCA), Uniformed Services Employment and Reemployment Rights Act (USERRA), State of Colorado Revised Statutes (C.R.S.) §§ 1-6-115, 1-6-122, 1-7-102, 8-40-101, 14-2-101, 14-15-103, 24-11-101, 24-11-112, 24-18-102, 24-33.5-825, 24-50-104, 24-50-109.5, 24-50-401, 28-1-104, 28-3-601, 28-6-602, 28-3-607, 28-3-609, and 28-3-610. (02/2017)

### **General Principles**

- 11-1. The state reserves the sole right to add, modify, or discontinue any state group benefits as deemed necessary. (7/1/10)
- 11-2. The Director complies with applicable federal and state law and regulations that govern state group benefit plans, as well as the terms and conditions of the state group benefit plans contracts and plan documents. Governing laws and regulations, and these rules shall prevail in the event of a conflict with contracts or plan documents. (7/1/10)
- 11-3. The rules in Chapter 11, State Benefit Plans, apply to all departments administering and all employees eligible for state benefit plans. (02/2017)

### **Director Responsibilities**

- 11-4. The Director will provide all group benefits information, written directives and training to departments necessary for department benefit administrators to fulfill their responsibilities as delegated agents to the plans. (7/1/10)
- 11-5. The Director has sole authority to determine eligibility, negotiate contracts, determine plan designs, set rates and coverage tiers, define the plan year, and establish open enrollment periods, in accordance with law, regulations, and approved funding. (7/1/10)
- 11-6. The Director's online benefits administration system is the official system of record for all eligibility and enrollment transactions. (7/1/10)

### **Department Responsibilities**

- 11-7. All departments shall exercise due diligence when administering group benefits in the best interests of the plans and all members. As delegated agents of the Director in their respective departments, each department benefits administrator's responsibilities include, but are not limited to, the following. (7/1/10)
  - A. Know and comply with plan documents and basic plan features, law and regulations, rules, benefits administration system, deadlines, the Director's website, and written directives.
  - B. Communicate, disseminate, explain, and answer questions on all benefits-related information including, but not limited to, options and changes, process, requirements and eligibility.

- C. Provide prompt notice of enrollment opportunities and information so employees can elect benefits during open enrollment or enroll within 31 days of hire or an employee's notice of a qualified event. The first day (day 1 of the 31 days) is the day after hire or a qualified event. (1/1/14)
  - D. Monitor deadlines and assist employees with meeting those deadlines.
  - E. Provide access to and training in the use of the benefits administration system, and assist employees with transactions.
  - F. Refrain from advising an employee of which individual elections to make and assisting an employee in the commission of fraud or attempted fraud of a state benefit plan.
  - G. Process timely and accurate transactions and payments. This includes regular review of pending actions, supporting documentation, and system reports in order to promptly approve elections, terminate coverage, investigate suspicious or questionable actions or data, correct errors, and verify continuing dependent eligibility.
  - H. Repealed (02/2017)
- 11-8 These responsibilities apply to all departments, including those that offer their own separate group benefit plans to other employees not covered by the "State Employees Group Benefits Act". (7/1/10)

### Employee Responsibilities

- 11-9. Employees are responsible for knowing, understanding, and adhering to these rules, plan documents for the terms and conditions of coverage, and eligibility and enrollment requirements in order to make timely and informed choices, including, but not limited to, the following. (1/1/14)
- A. Employees shall enter all required information in the benefits administration system in a timely and accurate manner in order to comply with eligibility and enrollment requirements for themselves and eligible dependents.
  - B. Enrollment of employees and eligible dependents is restricted to initial hire, annual open enrollment, and limited qualified events defined by law and plan documents. Elections are irrevocable for the plan year, except in limited circumstances specified by law or regulations. Failure to enroll or change elections within deadlines is not a qualifying event.
    - 1. Any permitted enrollment, modification, or termination of enrollment shall be entered into the official benefit administration system within 31 days of a qualifying event. Any supporting documentation required for the enrollment, modification, or termination of enrollment shall be submitted within 45 days of the qualifying event. The first day of the 31-day period is the day after the qualifying event. For open enrollment, transactions shall be entered into the official benefits administration system with accompanying documentation within the allotted time period established. (02/2017)
    - 2. Failure to enroll or modify enrollment on or before the 31st day of the qualifying event requires the employee to wait until the next open enrollment or at the time of another qualifying event. (02/2017)
    - 3. Enroll and verify elections annually.

4. Employees who transfer from one (1) department to another shall notify both department benefit administrators to avoid a potential lapse in coverage.
  - C. Employees shall remove any dependent by the end of the month in which the dependent ceases to meet eligibility requirements. Failure to do so results in the employee's continuing financial liability for total premium (employee and employer contributions) and cost of paid claims for the ineligible dependent, as specified in law and regulations, plan documents, and these rules.
  - D. Any enrollment or qualified change to enrollment constitutes authorization to begin or end payroll deductions.
    1. Employees shall verify the accuracy of their payroll deductions and notify their department benefits administrator of any error. The notice shall be in writing and within 15 days from the pay date in which the first payroll deduction occurred.
    2. If an employee fails to notify the department of the payroll error within the 15-day period, the employee will continue to be liable for the election for the remainder of the plan year unless the election is not consistent with plan documents, rules, laws, regulations, and written directives.
- 11-10. It is unlawful for any employee, or dependent to intentionally provide false, incomplete, or misleading facts, information, or document in written or electronic form, including the benefits administration system for the purpose of defrauding or attempting to defraud the State of Colorado. The Director shall investigate when there is reason to believe an employee or dependent is committing or attempting to commit fraud against any state group benefit plan. If the Director finds evidence of fraud or attempted fraud, the employee, dependent, or both may be subject to any or all of the following sanctions. (7/1/10)
- A. Immediate termination of coverage.
  - B. Denial of future enrollment.
  - C. Requirement to reimburse the state contributions and claims costs during the time of ineligible coverage.
  - D. Filing of criminal charges.
  - E. Notice to the employee's department, which may take employment action, such as corrective or disciplinary action.

### Eligibility

- 11-11. Employees and their dependents shall meet the eligibility requirements as defined in state law, plan documents, and rules to qualify for enrollment in the state group benefit plans. (7/1/10)
- A. Dependents may not enroll in the State Benefit Plans unless the employee is enrolled. If the employee and spouse/partner are both employees of the state, each may be enrolled as an employee or covered as a dependent of the other person but not both. If both the employee and spouse/partner make a separate election under the State Benefit Plans, only one (1) parent may enroll children as dependents. (02/2017)

- 11-12. Additional criteria and documentation requirements are contained in the State of Colorado Salary Reduction Plan, law and regulations, rule, and other written directives, which are available in the Employee Benefits Unit. Dependents may be federal tax dependents (qualified) or non-tax dependents (non-qualified). Non-qualified dependents' coverage is subject to taxable income regulations. Eligible dependents are specified in statutes, primarily § 24-50-603(5) and (6.5), C.R.S., as modified or further defined by other state statutes (e.g., Title 10) or federal regulations (e.g., Affordable Care Act [ACA], IRC on taxable income). (02/2017)
- 11-13. Legal documentation is required to add any dependent to State benefits. (1/1/14)

### **Coverage of Benefits**

- 11-14. Initial coverage in group benefit plans is effective on the first day of the month following the date of hire or initial eligibility unless otherwise specified by the contracts, law, or regulations. (1/1/14)
- 11-15. All coverage for a qualifying event is prospective from the beginning of the next month or the date of entry into the official benefit administration system, whichever is later, except for initial coverage for new employees and newborn children. (1/1/14)
- 11-16. Elections made during open enrollment are effective the first day of the new plan year, with the exception of optional benefits. (02/2017)
- 11-17. Termination of coverage is subject to law and regulation, plan documents, and contracts, as well as the following rules. (7/1/10)
- A. If at any time during the plan year any dependent ceases to meet the eligibility criteria, coverage ends on the last day of the month in which that dependent becomes ineligible.
  - B. Coverage in state group benefit plans is terminated on the last day of the month that employment ends.

### **Payment of Contributions**

- 11-18. Departments shall make prompt monthly payments based on enrollment in the official benefit administration system. (7/1/10)
- A. The employee's current department as of the last day of the month is responsible for payment.
  - B. A department is liable for both state and employee contributions when failing to promptly enter an employee termination.
- 11-19. Employees shall make an irrevocable election for the plan year to have contributions deducted on a pre-tax or after-tax basis as defined by the State of Colorado Salary Reduction Plan, law and regulations, rule, and written directives. The employee's contribution is deducted from the employee's pay or, under certain circumstances, paid by personal payment for the selected state group benefit plans, in arrears as of the end of the month in which an employee is covered. (02/2017)
- 11-20. An enrolled employee who works or is on paid leave one (1) or more regularly scheduled, full workdays in a month is eligible for the full state benefit contribution. (7/1/10)
- 11-21. When an employee is on leave, departments shall continue to pay the state contribution for non-contributory, fully paid benefits (e.g., basic life and short-term disability) as long as the employee remains on the payroll, regardless of status. (1/1/14)

- A. During paid leave or mandatory furlough, the employee contribution continues to be paid through payroll deduction and the department continues to pay the state contribution.
  - B. During unpaid leave, the employee shall pay the total premium (employee and employer contributions) to the department within the month of coverage, except as follows.
    - 1. During unpaid leave pursuant to the Family Medical Leave Act of 1993, the department shall continue to pay the state contribution as long as the employee continues to pay the employee contribution by the due date specified in the family/medical leave notice. If the employee fails to pay the employee contribution when due, coverage will be terminated but shall be reinstated upon return to work. In the event any contributions are owed upon the employee's return to work, such contributions shall be collected from the employee. If the employee fails to return after the leave, any contributions due will be recovered as specified by federal regulations. (02/2017)
    - 2. While an employee is on voluntary furlough or short-term disability leave, the department shall continue to pay the state contribution as long as the employee continues to pay the employee contribution in a timely manner. If the employee fails to pay the employee contribution by the due date, coverage shall be terminated and the employee shall wait for the next annual open enrollment.
- 11-22. Refunds for employee and state contributions are subject to plan limitations and as defined in law and regulations, rule, and written directives. (7/1/10)
- 11-23. When there is a difference between the contribution paid by the employee and the actual contribution due, the difference is paid by the employee (e.g., change in coverage tier). (7/1/10)

### Appeal Procedures

- 11-24. Appeals regarding denial of eligibility for state group benefit plans shall be submitted in writing to the Director, at the address below, within 31 days of receipt of the ineligibility decision. Use of the standard **"Colorado State Employees Group Benefits Eligibility Determination Appeal Form"** found on the Director's website is required. (1/1/14)

Appeals should be submitted to the Department of Personnel and Administration, Division of Human Resources via mail, email, or by fax.

Department of Personnel and Administration  
Division of Human Resources  
1525 Sherman Street  
Denver, CO 80203  
benefits@state.co.us  
Fax: 303-866-3879

The Director will issue a final written decision within 45 days of receipt of the appeal. The ineligibility decision is overturned only if found to be arbitrary, capricious or contrary to rule or law.

- 11-25. Appeals of denied claims under any of the state group benefit plans shall follow the specific appeal process defined in the specific contract, plan document, summary plan description, or regulated entity. The provider will issue a final written decision in accordance with its process. (7/1/10)

- A. Appeals of denied claims under fully insured plans are regulated by the State of Colorado Division of Insurance, and follow the plan's appeal process as defined in the contract and plan document.
- B. Appeals of denied claims under self-funded plans are not regulated by the State of Colorado Division of Insurance, and follow the third-party administrator's appeal process as defined in the contract and plan document.

### **Colorado State Employee Assistance Program**

- 11-26. Services provided include but are not limited to counseling services, crisis intervention, consultations with supervisors and managers, facilitated groups, trainings, and workshops. (7/1/10)
- 11-27. Any state employee and any department may participate in the program. (7/1/10)
  - A. The program may request the participation of other persons if necessary to provide effective assistance to the employee.
  - B. The limit per employee is one (1), six (6) session course of counseling in a twelve (12) month period. At the discretion of the counselor, additional sessions may be authorized.

### **Supplement State Contribution Program**

- 11-28. Eligible state employee means state employees who are eligible to enroll in medical and dental benefits, and have at least one (1) dependent child who will be covered under state benefits. A child cannot be covered under Child Health Plan Plus (CHP+). (04/01/2020)
- 11-29. Approval of application is subject to the established Supplement State Contribution Program's policy. (04/01/2020)
- 11-30. Determination of the Supplement State Contribution Program is final and cannot be appealed, as it does not relate to eligibility. (04/01/2020)

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### **Editor's Notes**

#### **History**

- Chapters 1, 2, 3, 5, 6, 8, 10 eff. 07/01/2007.
- Chapters 1, 4, 7, 8 eff. 10/01/2007.
- Chapters 3, 5 eff. 07/01/2008.
- Chapters 1, 2, 3, 4, 5, 6, 8 eff. 08/01/2008.
- Preamble, Chapter 7 emer. rules eff. 04/10/2009.
- Rule 5-13 A emer. rule eff. 05/20/2009; expired eff. 08/20/2009.
- Rules 7-4, 7-15, 7-18, and 7-21 eff. 07/01/2009.
- Preamble, 8-2, 8-50(C) eff. 12/01/2009.
- Preamble, 1-51, 1-70, 2-7, Chapter 5, 8-78 eff. 05/01/2010.
- Chapter 11 eff. 07/01/2010.
- Preamble, Chapter 8-50(C) eff. 08/14/2010.
- Preamble, Chapters 1 and 4 eff. 03/15/2011.

Chapters 3, 6-8 eff. 09/01/2012.

Preamble, Rules 1-25, 1-37.1, 1-38.2, 1-43, 1-46, 1-54, 1-55, 1-56.1, 1-61, 1-62.2 – 1-62.4, 1-64.1, 2-10.B.1, Chapter 4, 8-42, 8-46.A, 8-46.1, 8-53, 8-81, 9-7, 10-3.F emer. rules eff. 01/02/2013.

Preamble emer. rule eff. 01/15/2013; rule 2-13 emer. rule repealed eff. 01/15/2013.

Entire rule eff. 03/30/2013.

Preamble, Chapters 5 and 8 eff. 07/01/2013.

Entire rule eff. 01/01/2014.

Preamble, Rules 1-2, 1-26, 4-42, 6-10, 6-14, 8-28, 8-38 – 8-39, 8-45, 8-47, 8-51.A, 8-51.F, 9-6, eff. 01/01/2015.

Preamble, Rules 5-19 – 5-20 eff. 01/14/2015.

Preamble, Procedures 3-18, 5-1, 5-2, 5-5, 5-7 – 5-10, 5-12 – 5-16, 5-18 – 5-21, 5-25, 5-28 – 5-32, 5-34, 5-37, 5-38, 11-3, 11-9, 11-11, 11-12, 11-16, 11-19, 11-21 eff. 02/14/2017. Procedure 11-7 H repealed eff. 02/14/2017.

Preamble, Chapters 2, 3, 7 eff. 01/01/2018.

Preamble, Chapter 8 eff. 01/14/2018.

Preamble, Procedures 3-9.C, 3-26, 3-27, 3-42, 5-6, 5-10, 5-17, 5-17.D, 5-21 - 5-24, 5-33 - 5-36 eff. 11/01/2019. Procedure 9-7 repealed eff. 11/01/2019.

Preamble, Procedures 3-49.D.4, 5-39 – 5-41 emer. rules eff. 03/13/2020; expired 07/11/2020.

Preamble, Chapters 1, 3, 5, 10, 11 eff. 04/01/2020. Procedures 1-79.C-E, 10-4.C repealed eff. 04/01/2020.

Preamble, Procedures 5-4.A, 5-7(Table) emer. rules eff. 04/01/2020.

Preamble, Procedures 5-4.A, 5-7(Table), 5-17.A emer. rules eff. 07/01/2020.

Preamble, Procedure 5-39 emer. rules eff. 07/02/2020; expired 10/30/2020.

Preamble, Procedures 3-49.D.4, 5-4.A, 5-7(Table), 5-17.A, 5-21.A, 5-23, 5-38.A, 5-40, 5-41 eff. 08/01/2020.

Preamble, Chapters 1, 3, 4, 5 eff. 01/01/2021.

Preamble, Procedures 5-5.E, 5-15.D, 5-16 emer. rules eff. 01/13/2021. Procedure 5-17.C emer. rule repealed eff. 01/13/2021.

Preamble, Chapter 7 eff. 02/01/2021.

Preamble, Chapter 8. Part D emer. rules eff. 03/15/2021.

Preamble, Procedures 5-5.E, 5-15.D, 5-16, eff. 04/01/2021. Procedure 5-17.C repealed eff. 04/01/2021.

Preamble, Chapter 8 eff. 05/01/2021.

Preamble, Chapter 6 eff. 07/01/2021.