

State of Colorado



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NOTICE OF RULEMAKING

TO: Secretary of State
All Departments, Institutions, and Other Interested Parties

FROM: Tom Montoya, Acting Director *Tom Montoya*
Division of Human Resources

DATE: January 14, 2010

SUBJECT: Notice of Public Hearing to Consider Adoption of Permanent Administrative Procedures

The State Personnel Director will hold a public hearing on Thursday, February 18, 2010, to consider adoption of permanent administrative procedures. The hearing will commence at 9:00 a.m. in Courtroom 1 at 633 17th Street, Suite 1320, Denver, Colorado. All interested persons are invited to attend this public hearing and/or to submit written comments concerning the proposed administrative procedures to the State Personnel Director prior to the hearing for his consideration. Comments may be mailed to State Personnel Director, 1313 Sherman Street, 1st Floor, Denver, CO 80203, or emailed to charlene.wisher@state.co.us. Written comments must be submitted no later than close of business on Wednesday, February 10, 2010.

Reasonable accommodation will be provided upon request for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this public hearing, please notify Charlene Wisher at 303-866-2171 by Wednesday, February 10, 2010.

The administrative procedures being considered are as follows.

Chapter 1 - Definitions

1-51 clarifies that an independent contractor is not an employee.

1-70 deletes unpaid leave as a reason to adjust a service date.

Chapter 2 - Job Evaluation

2-7 clarifies and adds language to provide an employee with the opportunity to request an evaluation of his or her position.

Chapter 5 - Time Off

Amend, renumber, and repeal rules in Chapter 5 to simplify the language for ease of use, consolidate similar rules, clearly define expectations of appointing authorities and employees, remove process details and language repetitive with other sources, and ensure compliance with recent federal and state law related to leave.

Chapter 8 - Address for Disputes to the State Personnel Director

8-78 corrects the mailing address for all disputes (appeals, disputes, and reviews) under the state personnel director's jurisdiction.

Chapter 11 – State Benefit Plans

Amend, renumber, and repeal rules in Chapter 11 to simplify the language for ease of use, consolidate similar rules, clearly define authorities and expectations, remove process details and language repetitive with other sources, and ensure legal compliance including implementation of SB09-088 concerning same-gender domestic partners.

The proposed administrative procedures and the proposed statement of basis, specific statutory authority and purpose will be available for review by interested persons on or before close of business February 10, 2010, at 633 17th Street, Suite 1600, Denver, CO 80202; and 1313 Sherman Street, Room 114, Denver, CO 80203; and on the Web at <http://www.colorado.gov/cs/Satellite/DPA-DHR/DHR/1185870965353>.

The State Personnel Director's authority to promulgate these administrative procedures is enumerated in, but not limited to:

- Colorado Constitution, article XII, sections 13 and 14;
- State Personnel System Act, Title 24, Article 50, Sections 101 through 804, C.R.S. (2009);
- State Employees Group Benefits Act, Title 24, Article 50, Sections 601 through 615, C.R.S. (2009);
- State Support Services Reorganization Act, 24-50.3-104, C.R.S. (2009);
- Administrative Procedures Act, 24-4-103; and
- *CAPE v. Lamm*, 677 P2d 1350 (Colo. 1984).

**PROPOSED STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE FOR
THE STATE PERSONNEL DIRECTOR'S ADOPTION OF PERMANENT ADMINISTRATIVE
PROCEDURES**

4-CCR-801

The State Personnel Director is considering permanent adoption of the administrative procedures (hereafter "rules") listed below to reflect statutory and procedural changes, eliminate ambiguities, and provide clearer guidance to users of the Director's administrative procedures. The proposed rules were reviewed for comment by human resources professionals and by the two certified employee organizations, Colorado WINS and the Association of Colorado State Patrol Professionals, prior to notice of rulemaking.

Chapter 1 - Definitions

- 1-51. Add language to clarify that an independent contractor is not an employee in accordance with law.
- 1-70. Delete unpaid leave as a reason to adjust a service date.

Chapter 2 - Job Evaluation

- 2-7. Reorganize and clarify provisions regarding requirements and responsibilities for the official job description and request for review and allocation of an individual position. Add language regarding an employee's opportunity to request an evaluation of his or her position in response to a recommendation in the 2008 report by the Colorado Pay Equity Commission.

Chapter 5 - Time Off

Amend, reorganize and renumber into a more logical order, and repeal rules in Chapter 5 to simplify the language for ease of use, consolidate similar rules, clearly define expectations of appointing authorities and employees, remove process details and language repetitive with other sources, and ensure compliance with recent federal and state law related to leave. The rules in Chapter 5 address the following subjects and issues.

Add cites to the list of statutory authority to reflect changes in state law regarding leave: 8-13.3-101 through 104 (parental involvement K-12 education), 24-10-103 (qualified volunteer), 24-32-2202 and 2223 through 2228, 28-1-102 through 106 (qualified volunteer), 28-3-601 through 612 (public employee military leave), and 31-30-1131 (volunteer firefighter).

General Principles

- 5-1. Reorganize the rule and simplify the language. Add (D) to prohibit requiring a specified leave balance based on a State Personnel Board decision.
- 5-2. Add mandatory furlough, which has been implemented for the first time, as an exception to the requirement of using paid leave before unpaid leave.
- 5-3. Simplify the language regarding keeping records and reporting on leave.

Accrued Paid Leave – reword heading above 5-4.

- 5-4. Simplify the language on annual leave and add a requirement regarding the payment of forfeited annual leave hours when the forfeiture is caused by a department.
- 5-5. Simplify the language on sick leave. Add (A) to clarify an appointing authority's authority when an employee reports to work ill or injured that impacts the ability to perform the job or the safety of others.

Certificates – add a heading above 5-6.

- 5-6. Reorganize the rule and simplify the language on medical certificate requirements.
- 5-7. Simplify the language and add new requirements on incomplete medical certificates and contact with health care providers to comply with federal law and regulations for the Family and Medical Leave Act.

- 5-8. Simplify the language on second and third medical certificate opinions.
- 5-9. Reorganize the rule, simplify the language, and modify the requirements for medical certificates during intermittent family/medical leave to comply with federal law and regulations for the Family and Medical Leave Act.

Exhaustion of Leave – add a heading above 5-10.

- 5-10. Reorganize the rule and simplify the language, use common terminology for administrative discharge and clarify it is only used for the exhaustion of leave. Delete language related to short-term disability leave as it is being repealed (note the benefit is not impacted).

Monthly Leave Earning, Accrual, Payout, and Restoration for Permanent Employees – reword the heading above 5-11.

- 5-11. Clarify how years of service is calculated for purposes of earning annual leave, the use of make whole while receiving workers' compensation payments, and the use of leave during the short-term disability benefit waiting period. Simplify the language, including individual sick leave maximums for those hired prior to July 1, 1988. Delete the requirement that an employee be at work or on paid leave through the termination date to simplify administration and have consistent application. Delete the requirement to adjust earning rates for every 173 hours of unpaid leave to simplify administration and have consistent application (also see proposed 1-70 concerning service dates and 5-22 on unpaid leave). Add language to codify the existing policy of not prorating leave earning during make whole for more consistent application.

Leave Sharing Program

- 5-12. Modify the language to comply with HB09-1008 concerning leave sharing.
- 5-13. Simplify the language. Readopt (A) on a permanent basis due to the expiration of the emergency rule concerning conditions for use of donated leave, in accordance with HB09-1008. Repeal (B) and (C) as this detail on two specific circumstances is more appropriate to technical guidance.

Holiday Leave

- 5-14. Reorganize the rule for simplicity and clarity regarding holiday leave. Repeal the requirement for an employee to be in paid status the scheduled workday before or after a holiday to simplify administration and have consistent application.
- 5-15. Move and renumber the rule to (B) under 5-14. Renumber remaining rules in Chapter 5 accordingly. Correct an error with the insertion of "an".

Other Employer-Provided Leaves

- 5-16. Renumber to 5-15.
- 5-17. Renumber to 5-16 and simplify the language for greater clarity. Delete the prohibition on use of bereavement leave for settling an estate. Codify the provisions of a "universal policy" concerning the rights of employees and appointing related to the request and approval of the amount of the leave.
- 5-18. Renumber to 5-17 and change "calendar" year to "fiscal" year for military leave in accordance with HB09-1315.
- 5-19. Renumber to 5-18 and simplify the language related to jury leave.
- 5-20. Renumber to 5-19. Reorganize and simplify the language. The rule on administrative leave for American Red Cross volunteers (B) remains unchanged. Delete detail on leave for the war against terrorism (C) that is more appropriate for technical guidance. Add the requirement that departments adopt a policy for community or school volunteer leave (D).
- 5-21. Renumber to 5-20. Rules on discretionary administrative leave for voting in general elections (A) and for transplant donations (B) remain unchanged. Simplify the language concerning election judges (C). Add a rule for qualified volunteers and members of the Civil Air Patrol (D) to comply with HB08-1097 and HB09-1315. Add a rule to comply with HB09-1057 granting leave for parental involvement in K-12 academic activities (E).
- 5-22. Renumber to 5-21. Make a housekeeping change for uniform terminology. Delete the requirement to adjust earning rates for every 173 hours of unpaid leave to simplify administration and have consistent application (also see proposed 1-70 concerning service dates and 5-11 on

leave earning). Repeal short-term disability leave (note the benefits is not affected), as this leave is no longer necessary with the enactment of the Family and Medical Leave Act and will simplify the complexities of administering various concurrent leaves for better consistency. Renumber the rule on voluntary furlough from (B) to (A) and clarify the language. Renumber the rule on victim protection leave from (C) to (B), clarify the language, and delete the language that is more appropriate for technical guidance or repetitive of statute. Add a rule (C) on volunteer firefighter leave to comply with SB08-116.

Family/Medical Leave (FML)

- 5-23. Renumber to 5-22 and simplify the language. Move the statement in current 5-29 (proposed 5-28) regarding prohibition from waiving Family and Medical Leave Act.
- 5-24. Add language to comply with 2009 amendments to the Family and Medical Leave Act and new federal regulations concerning leave for active duty and military caregivers. Repeal the subparagraphs (A), (1) and (2), as the detail is more appropriate for technical guidance and official notices.
- 5-25. Renumber to 5-24. Reorganize the rule, creating a sub-paragraph (A). Simplify the language for better clarity and remove detail more appropriate for technical guidance. Renumber the current (A) to 5-25.
- 5-26. Repeal. Remove language that is repetitive of federal regulations and move details on application that is more appropriate for technical guidance.
- 5-27. Renumber to 5-26 and modify language to comply with new federal law and regulations regarding the concurrent use of compensatory time and make whole during family/medical leave.
- 5-28. Renumber to 5-27 and housekeeping change for uniform terminology.
- 5-29. Renumber to 5-28. Simplify the language regarding employer requirements and remove details more appropriate for technical guidance or official notices, including (A) and (B). Move the statement regarding prohibition from waiving Family and Medical Leave Act to proposed 5-22.
- 5-30. Renumber to 5-29. Modify the language to comply with new federal law and regulations regarding employee notice requirements when the need for leave becomes known less than 30 days in advance.
- 5-31. Renumber to 5-30.
- 5-32. Renumber to 5-31 and simplify the language for better clarity.
- 5-33 through 5-37. Renumber to 5-32 through 5-36.
- 5-38. Renumber to 5-37. Simplify the language for better clarity, such as the order of leave usage upon exhaustion of injury leave (A), use of administrative discharge upon exhaustion of all leave (B), and ineligibility for injury leave in the case of willful misconduct or violation of rules and regulations (C) or when the first 24 hours are not compensable (D).

Chapter 8 - Address for Disputes to the State Personnel Director

- 8-78. Correct the mailing address for all disputes (appeals, disputes, and reviews) under the state personnel director's jurisdiction to reflect the new consolidated filing process.

Chapter 11 – State Benefit Plans

Amend, reorganize and renumber into a more logical order, and repeal rules in Chapter 11 to simplify the language for ease of use, consolidate similar rules, clearly define authorities and expectations, remove process details and language repetitive with other sources, and ensure legal compliance. The rules in Chapter 11 address the following subjects and issues.

General Principles

- 11-1. Simplify the language to better clarify the State's responsibility for group benefits.
- 11-2. Reorganize the rule for simplicity and clarity regarding compliance with and order of precedence of governing laws, benefits-related documents, and rules.

Remove the heading "Employer Responsibilities" above 11-3.

- 11-3. Add clarifying language on the applicability of rules in Chapter 11. Delete and move remaining language to department responsibilities (see proposed 11-7 and 11-8) and payment of contributions (see proposed 11-18).

Director Responsibilities – add heading above 11-4.

- 11-4. Clarify the Director's responsibilities to departments. Delete and move remaining language to department responsibilities (see proposed 11-7 and 11-8).
- 11-5. Add language to consolidate and clarify the Director's responsibilities, e.g., move language from current 11-7.

Delete the heading "Eligibility" above 11-6.

- 11-6. Renumber current 11-5 to 11-6; delete and move language pertaining to the departmental records to department responsibilities [see proposed 11-7(H)]. Delete and move language of current 11-6 to eligibility (see proposed 11-11 and 11-12).

Replace the heading "Enrollment" with "Department Responsibilities" above 11-7.

- 11-7. Delete and move current language regarding the Director's responsibilities to new proposed 11-5. Consolidate current language and add new language to codify departmental responsibilities.
- 11-8. Delete and move current language related to enrollment to 11-9(B). Add language from current rule 11-4 and modify it to clarify applicability of department responsibilities.

Employee Responsibilities

- 11-9. Reorganize the rule to clarify employee responsibilities regarding enrollment and permitted changes, including consolidating language from current rules 11-11, 11-12, and 11-13.
- 11-10. Reorganize the rule and modify the language to clarify policy and consequences of committing or attempting to commit fraud against any benefit plan.

Eligibility – add heading above 11-11.

- 11-11. Delete current language that has been moved and consolidated under employee responsibilities (see proposed 11-9). Add language clarifying that employees and dependents must meet eligibility requirements to qualify for enrollment, including incorporating related language from current rule 11-6.
- 11-12. Delete current language that has been moved and consolidated under employee responsibilities (see proposed 11-9). Add language on dependent eligibility, including incorporating related language from current rule 11-6 and adding language to comply with SB09-088 on same-gender domestic partners.
- 11-13. Delete current language that has been moved and consolidated under employee responsibilities (see proposed 11-9). Add language on required documentation for dependent coverage.

Revise heading "Effective Date of Coverage" to "Coverage of Benefits" above 11-14.

- 11-14. No change made to the current rule. Offer alternative language to add a 30-day waiting period before coverage begins.

Delete the heading "Termination of Coverage" above 11-15.

- 11-15. Delete current language and move it to new proposed 11-17.
- 11-16. Renumber to proposed 11-19. Add language on effective date of elections made during open enrollment.
- 11-17. Renumber to proposed 11-20 and clarify eligibility for full state contribution. Add language to clarify termination of coverage, including incorporating language from current 11-15.

Revise heading "Employee and State Contributions" to "Payment of Contributions" above 11-18.

- 11-18. Delete current language and move it to new proposed 11-23. Add language on remittance of premiums based on the official benefits administration system, including incorporating language from current 11-3.
- 11-19. Renumbered to 11-24. Proposed language is renumbered from current 11-16 and clarifies the language related to payment of employee contributions.

Delete heading "Flexible Spending Accounts" above 11-20.

- 11-20. Delete current repetitive language that is governed by federal law and regulations, contracts, plan documents, and proposed 11-2. Proposed language is renumbered from current 11-17 and clarifies eligibility for full state contribution.

Delete heading "Leave" above 11-21.

- 11-21. Current language is consolidated and renumbered to 11-22 explaining how premiums are paid depending on the type of leave taken. Add language on financial liability for failure to remove an ineligible dependent.
- 11-22. Reorganize the rule and modify the language to consolidate all rules explaining how premiums are paid depending on the type of leave taken (current rules 11-21 through 11-25).
- 11-23. Current language is consolidated and renumbered to 11-22 explaining how premiums are paid depending on the type of leave taken. Proposed 11-23 is renumbered from current 11-18 and the language is unchanged.
- 11-24. Current language is consolidated and renumbered to 11-22 explaining how premiums are paid depending on the type of leave taken. Proposed language is from 11-19 and clarifies the employee's responsibility if there is a discrepancy in payment due and payroll deduction.
- 11-25. Current language is consolidated and renumbered to 11-22 explaining how premiums are paid depending on the type of leave taken.

Delete the heading "Consolidated Omnibus Budget Reconciliation Act (COBRA) Continuation Coverage" above 11-26.

- 11-26. Delete repetitive language that is governed by federal law and regulations, contracts, plan documents, and proposed 11-2.

Delete the heading "Medicare" above 11-27.

- 11-27. Delete repetitive language that is governed by federal law and regulations, contracts, plan documents, and proposed 11-2.

Delete the heading "Conversion to Non-Group Coverage" above 11-28.

- 11-28. Delete repetitive language that is governed by federal law and regulations, contracts, and plan documents.

Revise the heading "Complaint and Appeal Procedures" to "Appeal Procedures" above 11-29.

- 11-29. Renumber to 11-25 and simplify the language to clarify the appeal process for eligibility decisions. Add the mailing address and standard for overturning an eligibility determination. Change the deadline for an employee to file an appeal from 20 to 31 calendar days. Change the deadline for the Director to issue a written decision from 45 to 90 calendar days to be consistent with other types of appeals to the Director.
- 11-30. Renumber to 11-26. Reorganize and consolidate current rules 11-30 through 11-32 that are related to appeals of denial of claims. Create a sub-paragraph (A) for current language related to denial of appeals under fully insured plans.
- 11-31. Renumber to 11-26 (B) related to appeals of denial of claims under self-funded plans.
- 11-32. Delete as the concept is consolidated under other rules related to appeals.

Colorado State Employee Assistance Program – revised the heading above 11-33 to reflect specific program name.

- 11-33. Renumber to 11-27 and simplify language.
- 11-34. Renumber to 11-28 and simplify language.
- 11-35. Repeal. Repeats statute [24-50-604(k)(IV)] regarding program funding sources.

The State Personnel Director's authority to adopt these administrative procedures is enumerated in, but not limited to:

- Colorado Constitution, article XII, Sections 13 and 14;
- State Personnel System Act, Title 24, Article 50, Sections 101 through 804, C.R.S. (2009);

- State Employees Group Benefits Act, Title 24, Article 50, Sections 601 through 615, C.R.S. (2009);
- State Support Services Reorganization Act, 24-50.3-104, C.R.S. (2009);
- Administrative Procedures Act, 24-4-103; and
- *CAPE v. Lamm*, 677 P2d 1350 (Colo. 1984).

The amendments adopted in Chapters 1, 2, 5 and 8 shall be effective April 1, 2010, and the amendments adopted in Chapter 11 shall become effective July 1, 2010.

Adopted XXXXXX XX, 2010.