

GRIEVANCE PROCEDURE MODEL POLICY WITH OPTIONAL VOLUNTARY MEDIATION

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THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

INTRODUCTION

The State Employee Grievance Procedure Act provides that each agency and department of State government shall establish an employee grievance procedure for covered employees which shall be reduced to writing and be approved by the State Human Resources Director. A copy of the approved grievance procedure must be made available to covered employees of the agency. Employees choosing to file a grievance or appeal must not be disciplined or otherwise prejudiced for exercising rights or testifying under the provisions of this policy.

As provided for in the Act, grievances or appeals shall include terminations, suspensions, involuntary reassignments in excess of thirty (30) miles from the prior work station, and demotions. Reclassifications, reassignments, and transfers within the same state salary range are not considered grievances or appeals. However, reclassifications are considered a grievance only if an agency, or an appeal if the State Human Resources Director, determines that there is a material issue of fact that the action is a punitive reclassification. Promotions are not adverse employment actions which may be considered grievances or appeals except in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. However, when an agency promotes an employee one organizational level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered a grievance or an appeal.

A salary decrease based on performance as the result of an EPMS evaluation, is an adverse employment actions that may be considered as a grievances or an appeal. A reduction in force is also an adverse employment action considered as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.

Prior to filing a formal grievance, the covered employee may first attempt to resolve the matter informally with his immediate supervisor. This matter may be presented verbally or in writing. However, this is merely an informal attempt to resolve the matter and cannot be substituted for the requirements of Step One in the following procedure.

PROCEDURE

Step One

If the matter was not resolved informally with the covered employee's immediate supervisor, the covered employee must notify the agency's Human Resources Office in writing to initiate a formal grievance. The covered employee must initiate the grievance with the agency's Human Resources Office within fourteen (14) calendar days of the effective date of the action.

The agency's Human Resources Director or other designated official shall initially review the grievance to determine whether the matter involves a grievance as defined by the Act. The agency's Human Resources Director or other designated official may conduct appropriate investigations and fact findings as he may consider necessary to make this determination. If it is determined that the matter is not grievable, the covered employee shall be so advised in writing by the Agency Director or a designee, normally within five (5) calendar days of receipt of the grievance. Such determination shall be a final decision within the agency which may be appealed to the State Human Resources Director.

If it is determined that the matter is grievable, the agency's Human Resources Director or other designated official will contact the covered employee and the appropriate agency representative(s), normally within five (5) calendar days of receipt of the grievance, to inform them the issue can be heard under this grievance procedure and inquire whether or not they desire to participate in voluntary mediation. Both parties must make a written decision to the agency's Human Resources Director within two (2) calendar days of this notification. Failure by either party to respond timely to this notification is deemed a refusal to participate in the voluntary mediation. Any initial determination by the agency's Human Resources Director or other designated official that the matter may be grieved shall only entitle the covered employee to have the matter considered in accordance with this grievance procedure and shall in no way be construed to be an adjudication of the merits of the grievance.

With Mediation

When the covered employee and the agency representative(s) both agree in writing to participate in voluntary mediation, the agency's Human Resources Director or other designated official will schedule a mediation conference to occur within five (5) calendar days and make the necessary arrangements for acquiring a mediator. The mediator will serve as an impartial third party who will encourage and facilitate a resolution to the dispute without advising what the result should be. The mediation conference(s) will be confidential and limited to the parties and their representatives. Other persons may attend with the permission of the mediator and the other party. The mediator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation conference in any adversary proceeding or judicial forum. If the parties agree to settle the matter, the mediator will assist in drafting a mediation agreement which both parties must sign. The mediator may share terms of

the settlement agreement with the agency's designated officials who need to finalize and assist in implementing the agreement. If the matter is not settled within eight (8) calendar days of the initial mediation conference, the mediator will inform the agency's Human Resources Director or other designated official that settlement has not occurred. The agency's Human Resources Director or other designated official will then schedule a conference to occur between the covered employee's next level supervisor and the covered employee within five (5) calendar days. At the conference with the covered employee's next level supervisor, the covered employee will have an opportunity to present his position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his next level supervisor's decision in writing within five (5) calendar days of the conference.

Without Mediation

If the matter is grievable and the covered employee or the agency submits a written decision not to participate or fails to respond timely concerning voluntary mediation, the agency's Human Resources Director or other designated official will promptly schedule a conference to occur between the covered employee's next level supervisor and the covered employee, normally within five (5) calendar days. At the conference with the covered employee's next level supervisor, the covered employee will have an opportunity to present his position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his next level supervisor's decision in writing within five (5) calendar days of the conference.

Step Two

To continue the grievance, the covered employee must notify the Agency Director or a designee in writing within five (5) calendar days after receiving the Step One decision. The Agency Director or a designee must promptly schedule and conduct a conference with the covered employee, normally within five (5) calendar days. The covered employee will be provided an opportunity at this time to present his position regarding the grievance. The Agency Director or a designee may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The Agency Director or a designee must advise the covered employee of the decision in writing within five (5) calendar days of the conference. This decision will be final within the agency.

GENERAL INFORMATION

The Act provides for an appeal of a grievance beyond the agency to the State Human Resources Director. Any covered employee may appeal the decision of the Agency Director or a designee. Such appeal must be in writing and submitted to the State Human Resources Director within ten (10) calendar days of receipt of the agency's final decision or 55 calendar days from the initial date the grievance was filed within the agency, whichever occurs later. As to the 55 calendar days, the Act provides that a covered employee may appeal directly to the State Human Resources Director in the event the agency does not complete its entire internal grievance procedure within 45 calendar days from the time the grievance is initially filed within the

agency. Failure by the agency to issue a final decision within this 45 calendar day period is considered an adverse decision. The failure to issue a final decision allows the covered employee to proceed with an appeal to the State Human Resources Director after 45 calendar days, but no later than 55 calendar days from the initial date the grievance was filed within the agency. Failure by the covered employee to file an appeal within the time periods referenced in this paragraph shall constitute a waiver of the right to appeal.

Failure by the covered employee to comply with the internal time periods in the agency grievance procedure constitutes a failure to exhaust administrative remedies and waives the covered employee's right to further continue the grievance. The internal time periods of the agency grievance procedure, however, may be waived upon the mutual written agreement of both parties. The 45 calendar day period for action by the agency may not be waived except by mutual written agreement of both parties.

The Act allows the covered employee to appeal to the State Human Resources Director any grievance involving the issues specified in the Act after all administrative remedies to secure relief within the agency have been exhausted.

The Act provides that a covered employee has the right during the grievance and appeal process to a representative, which may include legal counsel. If the covered employee chooses to exercise the right of legal counsel, it shall be at his expense.