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## Grievance Procedure Policy

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### Introduction

The State Employee Grievance Procedure Act (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.

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 grievance procedure.

### Grievance Definition

Grievances shall include terminations, suspensions, involuntary reassignments, and demotions. 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. However, reclassifications, reassignments, and transfers within the same salary range are not adverse employment actions which may be considered grievances or appeals. 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. 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. Salary decreases based on performance are adverse employment actions that may be considered as grievances or appeals. A reduction in force is 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.

The following examples of employment actions do not constitute a basis for a grievance or an appeal:

- A covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions and the covered employee can rescind such voluntary actions only if the agency head or the agency head's designee agrees;
- A covered employee whose position is reclassified to a class with a lower salary range shall not have the right to file a grievance or an appeal concerning the reclassification to the State Human Resources Director unless a determination is made that a material issue of fact exists concerning a punitive reclassification;
- A covered employee who is promoted and subsequently demoted prior to serving six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a class with a lower salary range than the class in which the employee was serving prior to promotion;
- A covered employee who is promoted and subsequently receives a reduction in pay prior to completing six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to promotion.

## Grievance Procedure

### *1. 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 promptly schedule a conference to occur between the covered employee's next level supervisor and the covered employee, normally within five (5) calendar days of receipt of the grievance. However, 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. 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.

### *2. 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.

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.

## Appeals to the State Human Resources Director

If a covered employee is not satisfied with the agency's final decision concerning his grievance, he may appeal, after all administrative remedies to secure relief within the agency have been exhausted, to the State Human Resources Director who will determine whether to dismiss the appeal or remand or forward the appeal for further action.

A covered employee who wishes to appeal the decision of the agency grievance procedure to the State Human Resources Director shall file an appeal within ten calendar days of receipt of the decision from the agency head or his designee or within 55 calendar days after the employee files the grievance with the agency, whichever occurs later. The covered employee or the employee's representative shall file the request in writing with the State Human Resources Director. Failure to file an appeal with the State Human Resources Director within ten calendar days of the agency's final decision or 55 calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal. The time periods for appeal to the State Human Resources Director may not be waived.

The Office of Human Resources shall develop standard forms to be used in all appeal procedures. Upon receipt of an appeal from a covered employee, the State Human Resources Director shall:

- Acknowledge receipt of the appeal and require that the covered employee submit a standard appeal application form;
- Upon receipt of the standard appeal application form, notify the agency to furnish the State Human Resources Director a copy of all records, reports, and documentation of the earlier proceedings on the grievance within 15 calendar days following the request, unless an extension is granted.
- Determine whether the appeal is timely and complies with the jurisdictional requirements of the Act.

If the State Human Resources Director determines that the appeal is untimely or fails to comply with the requirements of the Act, he will notify the covered employee or his representative that the appeal is denied and no further action will be taken concerning the appeal. As a result of the State Human Resources Director's decision, the covered employee may request reconsideration within 30 calendar days from notification of the decision. A notice of appeal seeking appellate review of the decision may be made by the covered employee to the Administrative Law Court as provided in Sections 1-23-380 (B) and 1-23-600 (D) of the S.C. Code of Laws.

If the State Human Resources Director determines that additional action by the agency is necessary and appropriate, he may remand the appeal to the agency.

If the State Human Resources Director determines that the covered employee has pending related criminal charges against him, the appeal process may be held in abeyance pending the outcome of those charges. If the appeal is held in abeyance, the covered employee or his representative must notify OHR within 30 calendar days after the disposition of the charges has been determined in order to preserve the covered employee's right to further pursue his appeal.

Failure to contact OHR within those 30 calendar days will be deemed a waiver and abandonment of the appeal.

If the State Human Resources Director determines that the appeal is timely and complies with the requirements of the Act, he will forward the appeal either (1) to the mediator-arbitrator for mediation-arbitration or (2) after the mediation process has been completed, to the designated panel of the State Employee Grievance Committee [Committee] and Committee Attorney for a hearing, whichever is appropriate based on the type of adverse employment action.

When an appeal is forwarded to a designated Committee panel, the State Human Resources Director will notify the covered employee and the agency with a statement as to the

issues which have been presented by the parties for presentation before the Committee for decision. The official record on each appeal and all related correspondence and documents shall be maintained in a confidential file by OHR.

The State Human Resources Director will send the notices and correspondence pertaining to an appeal directly to the parties. When a party designates a representative, the State Human Resources Director will send all notices and correspondence to that representative, rather than to the party.

## GENERAL INFORMATION

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.

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