

**Frequently Asked Questions**  
**Regarding**  
**Executive Order D 028 07**  
**Authorizing Partnership Agreements with State Employees**

*(Italicized passages in the answers below are direct quotes from the executive order.*  
If there is any conflict between this FAQ list and the executive order,  
the executive order takes precedence.)

**A: Effects on Individual State Employees**

**1. What is the purpose of the executive order?**

The Governor, in the preface of the executive order, stated that this initiative and related reforms are intended, *to enhance the delivery of services and products to the people of Colorado and ... to make state government more effective, efficient, reliable, and accountable.*

The order also states, *truly engaging ... employees so they become more positive and productive contributors to the organization and the decision-making process requires a structure to facilitate their involvement. Employee-management partnerships provide that structure.*

(For more information on the purpose of the partnership agreements, see Section I of the Executive Order, below.)

**2. Which employees are covered by the executive order?**

An employee's position is covered by the executive order if the employee is *employed in the 'personnel system of the state,' as set forth in section 13 of article XII of the Colorado Constitution*, unless the employee's position falls into one of the exceptions stated in the executive order. Generally, this limits participation to employees in the classified service subject to the exclusions below.

**3. What are the exceptions?**

The executive order provides that some employees within an occupational group are excluded from the respective employee partnership unit if the employees' positions fall within the following exceptions:

- *confidential employees;*
- *managerial employees;*
- *supervisory employees;*
- *Senior Executive Service employees;*
- *members of the Colorado National Guard;*
- *Director of the Division of Labor, the Governor's Designee, and those employees working with the Director and the Designee to implement the provisions of this Executive Order;*
- *administrative law judges and attorneys whose responsibilities include providing legal advice;*

- *student employees;*
- *individuals in the custody of the Department of Corrections or any law enforcement agency;*
- *patients or residents of a state institution; and*
- *temporary employees employed for six months or less.*

Most of these are self-explanatory. A few are addressed in more detail below.

**4. Which positions are excluded as “confidential” for purposes of the executive order?**

A “confidential” employee is one whose position entails access to, or management of, sensitive labor relations information, irrespective of classification or title. This typically includes, among others, employees who: (a) serve as executive assistants to high-level executives; (b) regularly attend senior or executive staff meetings; (c) conduct internal personnel investigations; or (d) handle labor relations issues within human resources offices.

For additional information as to whether this exclusion applies to you, please contact your department’s human resources office.

**5. Which positions are excluded as “managerial” for the purposes of the executive order?**

“Managerial employee” means an employee who is:

- engaged predominately in executive and management functions; or
- charged with the significant operational responsibility of directing the effectuation of management policies and practice.

This includes employees who plan, direct, and execute major programs or who formulate and execute policies governing the operation of major segments of the department.

Additionally, this group is likely to include, among others, members of the department’s senior or executive staff as well as third-level supervisors (and above). For additional information as to whether this exclusion applies to you, please contact your department’s human resources office.

**6. Which positions are excluded as “supervisory” for purposes of the executive order?**

According to the terms of the executive order and the relevant personnel rules, only “appointing authorities” are excluded under this category. Thus, the use of the term “supervisory” in the executive order does not necessarily correspond to the more common use of the term in your organization.

**7. If I am a classified state employee and also serve in the Army National Guard or Air National Guard, am I excluded?**

The National Guard provision is intended to exclude only those persons whose sole employment connection with the State is through their National Guard service. If you are a state employee, and otherwise eligible to participate in a partnership unit under this executive order, your National Guard affiliation will not exclude you.

**8. If I am excluded from participation in the partnership unit for my occupational group, may I join one or more employee organizations? Will I continue to receive the same total compensation package that other employees in my classification receive?**

Yes and yes.

**9. Who decides whether an employee’s position falls within one or more of the exclusions? What if I don’t agree with the determination?**

*The Governor’s Designee will make the initial determinations regarding the applicability of these exclusions. Any party objecting to such a determination may appeal to the Director of the Division of Labor. The Governor’s Designee typically collaborates with the department’s human resources director in making his determination.*

If you object to your exclusion (or inclusion) please contact your department’s human resources office. If necessary, your department’s human resources office will provide you with information on how to lodge a protest with the Division of Labor.

**10. Who is the Governor’s Designee?**

*‘Governor’s Designee’ means the person the Governor designates as the individual who shall represent the Executive Branch in the exercise of all of the Executive Branch’s responsibilities under this Executive Order. The Governor’s Designee is Martin E. Flahive in the Governor’s Office. (Information on how to pose questions to the Governor’s Designee appears below.)*

**11. What is a partnership unit?**

*“Partnership Unit” means a unit consisting of Covered Employees in a single occupational group. Those occupational groups are currently as follows:*

- i. Administrative Support and Related Services;*
- ii. Enforcement and Protective Services;*
- iii. Financial Services;*
- iv. Health Care and Medical Services;*
- v. Labor, Trades, and Crafts;*
- vi. Physical Sciences and Engineering;*
- vii. Professional Services and Teachers; and*
- viii. Troopers.*

The principal differences between this list and the list of occupational groups under the state personnel system are: (a) the separation of Troopers from the Enforcement and Protective Services occupational group; and (b) the inclusion of teachers in the Professional Services occupational group. With the exception of Troopers, occupational groups cut across many departments, including executive departments, institutions of higher education, and agencies under other elected officials (Treasury, State, Law).

**B. Elections and Employee Organizations**

**12. How many employees in a prospective partnership unit must sign a petition in order to trigger a representation election?**

If an employee organization provides proof of support by *thirty percent (30%) or more of the employees in the Partnership Unit, the Director of the Division of Labor shall direct that an election be held.* The executive order provides guidance on the role of the Division of Labor in determining the validity of a petition for an election.

As an illustration, if there are 2,100 employees in your occupational group, and 100 are excluded from the partnership unit, any of the remaining 2,000 may sign petitions or otherwise indicate support for an employee organization. If an organization submits proof of

support from 30% (in this illustration, 600) an election will be conducted by the Division of Labor.

**13. If a representation election is held, how many votes are required for an organization to be designated as the “certified employee organization?”**

To be designated as a “*Certified Employee Organization*” it must have been *selected by a majority of the employees voting in a secret ballot election*, held in accordance with the procedures established by the Division of Labor. Note that the outcome of an election is based on a majority of those voting.

Using the same illustration, the 2,000 employees in your occupational group (who may well come from a dozen or more agencies and institutions) will receive ballots for such an election. If 1,225 vote, an organization would have to receive 613 votes to prevail. (There are provisions for a run-off in those cases where two or more organizations are on the ballot and none receive a majority of votes.)

**14. How should managers and supervisors answer questions from employees regarding the executive order or its provisions regarding employee organizations, elections, and the like?**

This is a difficult area. Employees are understandably curious about how the executive order works and how it might affect them. This FAQ resource is intended to answer many of these questions for employees, including human resources professionals. An important limitation is that:

*Neither the Director of the Division of Labor nor any management or supervisory employee may encourage or discourage membership in any Employee Organization nor encourage or discourage exclusive representation of employees by any Employee Organization.*

It is not practical to ensure that every supervisor knows all the details of the executive order. Employees should be directed to this FAQ and the executive order. If questions are posed to a managerial or supervisory employee that can’t be adequately addressed in this fashion, the question should be submitted to the human resources director for that department. In some instances, the department’s human resources director may choose to query the Governor’s Designee. (For the “What should I do?” questions, see below.)

As a manager or supervisor, there are things that you are free to do without conflicting with the executive order. For example, a supervisor may:

- Continue to discuss matters of employee interest regarding improving the workplace and work product.
- Continue to manage work units and administer State and departmental policies and rules, total compensation elements, dispute resolution processes, etc.
- Tell employees they may join or not join employee organizations without fear of reprisals.
- Advise employees to read any petitions they sign, consider all choices carefully when voting, and consult the FAQ and the executive order for information that may assist them in making their choices.
- Encouraging employees to study the options presented to them and make decisions which they feel are in the best interests of themselves and their colleagues.

- Explain the department's access policy as it relates to employee organization representatives and informational materials in the work place.

It is also clear that there are some things a supervisor or manager should avoid, including:

- Steering an employee toward or away from any particular organization.
- Promoting or opposing any employee representation election.
- Anything that might appear coercive or discriminatory in relation to membership or non-membership in an employee organization.

**15. Does the state provide employees' personal phone numbers or addresses to employee organizations?**

No.

**16. May employee organizations contact me at work?**

That depends upon the access policy developed by your department. If you have any doubts about such contacts, please contact your department's human resources office.

As an individual, you may choose to engage in such communications or decline them, subject to your department's access policy and the needs of your work assignment.

The access policies of the departments also address how and when state-owned facilities may be used to make information about employee associations available to employees.

Ordinarily, employees are expected to use normal breaks, lunch intervals, after hours, or annual leave to attend any on-site or off-site gatherings.

**17. If an election is held for my occupational group, how will I receive my ballot?**

If you are eligible to vote, you will receive a ballot by mail at your home address from the American Arbitration Association (AAA). The AAA has been engaged by the Division of Labor to administer elections under the executive order. While the AAA will use personal addresses, that organization is bound by a confidentiality agreement not to disclose any such information to employee organizations or any third party. You will receive a ballot if you are eligible to vote – even if you have elected to limit contact by employee associations.

Please note: *This is a secret ballot. Individual votes will not be disclosed to anyone.*

**18. What would be on a ballot for such an election?**

*In an election, Covered Employees will have the option of voting to be exclusively represented by the petitioning Employee Organization, any of the intervening Employee Organizations, or to reject representation by any Employee Organization (i.e., a vote of "no").*

So if only one organization is on the ballot, you may vote for that organization or vote to not be represented ("no"). If two or more organizations are on the ballot, you will have the option to vote for one of those organizations or vote not to be represented. In the latter case, if none of the choices receive a majority vote, there are provisions in the executive order for a run-off election.

**19. If I receive a ballot, am I required to vote?**

No. However, if you do not vote, you will not have any say in whether any organization will represent your occupational group. Also, if more than one organization is on the ballot and

you don't vote, you will not have a say regarding which organization you prefer. The majority of those voting will determine the outcome of an election.

**20. If I believe that I am eligible to vote in an election in progress but have not received a ballot, what should I do? What if I moved and the ballot was not forwarded?**

Contact your department's human resources office to determine if you were excluded under the provisions above. If you were not, your department's human resources office or the Governor's Designee will authorize the American Arbitration Association to provide you with a substitute ballot. Additionally, the AAA will have a process for obtaining replacement ballots where appropriate – including a toll-free telephone number.

**21. Am I required to join an employee organization?**

No. That is solely at your discretion.

**22. Should I sign a petition, or join an employee organization, or vote for an employee organization.**

This is an individual choice. You are encouraged to obtain enough information to make an informed decision.

**23. Will I be required to pay dues to an employee organization?**

No, you will not be expected to pay dues to an employee organization unless you have freely chosen to be a dues-paying member of such an organization.

**24. If I choose not to join an employee organization, are my rights reduced?**

No. You still have all the rights available to you as a classified employee.

**25. If I don't join an organization that is elected to represent my occupational group, does that mean that I'm not represented at the table?**

No. Certified Employee Organizations are, among other things, *responsible for representing the interests of all Covered Employees within a Partnership Unit on issues covered by this Executive Order without discrimination and without regard to employee organization membership.*

Further, the existence of a partnership agreement will not prevent you from addressing your department's leadership on matters of common concern.

**26. How do I contact employee organizations which may be involved in representation elections or in partnership negotiations?**

If you have questions about any organizations (e.g. how they are organized, what dues are assessed from members, how dues are utilized, how to get more information, how to be removed from contact lists, etc.) please use the below information to pursue those questions directly with the associations:

**Association of Colorado State Patrol Professionals**

303-237-7439; FAX - 303-237-2067; Lonnie Westphal, Director  
[lonnie.westphal@acspp.net](mailto:lonnie.westphal@acspp.net); <http://www.acspp.net>

**Colorado Public Employees Alliance - CWA**

[An affiliate of the Communication Workers of America / AFL-CIO]  
303-741-4135; FAX - 303-741-4657; Jo Romero, President  
[jor@cpeacolorado.org](mailto:jor@cpeacolorado.org); <http://www.cpeacolorado.org>

**Colorado Workers for Innovation and New Solutions (Colorado WINS)**

[An affiliation of the American Federation of State, County and Municipal Employees (AFSCME), Service Employees International Union (CAPE-SEIU, and The American Federation of Teachers, Colorado (AFT)]

Denver Metro: 303-727-8040; Pueblo: 719-545-1053

Northern Colorado/Western Slope: 970-372-8737

[info@coloradowins.org](mailto:info@coloradowins.org); <http://coloradowins.org>

**Service Employees International Union (SEIU) Local 105**

303-698-7963, ext 115; FAX 303-698-2626; Lauren Martens, Executive Director

[lmartens@seiu105.org](mailto:lmartens@seiu105.org); <http://www.ecape.net>

**Teamsters 435**

303-475-8920; FAX - 303-480-1015; Vince Shaw, Representative

[vshaw@teamsterslocal435.org](mailto:vshaw@teamsterslocal435.org)

**27. If an employee organization is certified for my occupational group, how long will that organization represent my group?**

An organization elected under the terms of this executive order would represent your occupational group for at least two years. Under certain circumstances, a partnership agreement can provide for continuous representation unless a successful decertification election is conducted.

**28. If I belong to or join an employee organization, may I have dues deducted from my payroll? What if the organization is not a Certified Employee Organization?**

The Executive Director of the Department of Personnel and Administration has the discretion to approve or disapprove such deductions, irrespective of whether the organization is certified under this executive order. For more information on this matter, please see <http://www.colorado.gov/dpa/dhr/pubs/forms.htm>.

**29. Will existing employee or staff councils continue if an employee organization is certified?**

That will likely vary from department to department.

**C. Partnership Agreements – Nature and Scope**

**30. What is a partnership agreement?**

*“Partnership Agreement” means an agreement arrived at through good faith discussions between the Governor’s Designee, on behalf of the Executive Branch, and representatives of the Certified Employee Organizations, on behalf of the employees, that provides for improving government services, achieving efficiencies, and establishing the framework for discussing issues of mutual concern to the employees and the State.*

The objective is to create a process in which employees, speaking through their certified employee organizations, can work with management to arrive at mutually agreeable solutions to problems identified by any of the participating parties.

**31. How are partnership agreements developed?**

Partnership discussions can be in response to initiatives from certified employee organizations or from the Governor’s Designee. They are governed by certain broad rules.

*The Governor's Designee and the representatives of Certified Employee Organizations have a mutual obligation to negotiate, in good faith at reasonable times and places, the terms of a Partnership Agreement. The discussions regarding Partnership Agreements can be initiated by the Governor's Designee or in response to a proposal by a Certified Employee Organization or a coalition of Certified Employee Organizations.*

Within that framework, the possibilities are rather broad.

### **32. What are permissible topics within a partnership agreement?**

Almost any topic can be discussed in the deliberative process. However, there are exclusions in the executive order pertaining to the constitutional and statutory duties of agencies and officers. Further, the fact that a matter may be discussed in partnership discussions does not imply that the parties are bound to agree on any particular actions.

Agreements may relate to a specific occupational group (across the state), a specific agency, or may be state-wide in nature. *A particular Partnership Agreement may be negotiated, depending upon the nature of the issues subject to the Agreement, on a statewide basis, occupational group basis, or departmental basis.*

### **33. Are any topics prohibited?**

While the conversation may be wide-ranging, there are limits to the scope of any partnership agreement. For example:

- *Nothing in any Partnership Agreement may diminish the Governor's discretion to prepare his proposed budget, including setting the amount allocated to total employee compensation in that proposed budget.*
- *Neither this Executive Order nor any Partnership Agreement ... may expand the authority of the Office of the Governor, the Department of Personnel and Administration, or the Department of Labor and Employment beyond that authorized by the Colorado Constitution or the Colorado Revised Statutes.*
- *... nothing in this Executive Order shall diminish ... department heads', college and university presidents', and higher education governing boards' responsibility and accountability for the actual operation and management of the state personnel system for their respective departments, colleges, or universities ....*
- *... a Partnership Agreement may not include a requirement ... that the Executive Branch or any department negotiate with respect to ...: (1) matters constitutionally and statutorily delegated to the State Personnel Board; (2) the statutory function of any department or agency; or (3) matters related to the Public Employees' Retirement Association.*

### **34. How are issues of statewide concern addressed in partnership discussions?**

The precise mechanics of these discussions are still in the formative stages. However, the executive order anticipates that some issues will, by their nature, affect all classified employees and potentially all departments under the Governor. As you will see below, agreements on such topics are subject to executive review.

*Partnership Agreements that govern discussions of matters impacting all Covered Employees as a whole or that necessitate statewide uniformity ... shall be negotiated on a collaborative basis with all Certified Employee Organizations. The negotiation of such a Partnership Agreement shall be conducted by the Governor's Designee in concert with the executive*

*officials charged with administering the issues subject to the Agreement (such as the Director of the Department of Personnel and Administration), on the one hand, and a designee or negotiating team selected by a coalition of the Certified Employee Organizations, on the other hand. Such a Partnership Agreement is subject to the approval of the Governor and other officials charged with administering the issues subject to the Agreement.*

It is likely that multiple departments and multiple Certified Employee Organizations would participate in such discussions.

### **35. How are issues of department-wide concern addressed?**

The Governor's Designee will determine whether any topics are best addressed at the departmental level. If that is the case,

*Partnership Agreements that govern discussions of matters impacting Covered Employees in a single department shall be negotiated by the Executive Director of such department in concert with the Governor's Designee, on the one hand, and a designee or negotiating team selected by a coalition of the Certified Employee Organizations representing Covered Employees in the respective department, on the other hand.*

*Such a Partnership Agreement is subject to the approval of the executive director of the department and the Governor. The Executive Directors in the ... Departments are directed to negotiate, in good faith, a Partnership Agreement with the Certified Employee Organizations representing the Covered Employees in their departments.*

Note, though, that, *the Attorney General, Secretary of State, Treasurer, State Board of Education, and governing boards of institutions of higher education may, at their discretion, elect to negotiate Partnership Agreements with Certified Employee Organizations representing Covered Employees in their respective departments or institutions.*

Thus, when department-specific issues arise, it is possible that several Certified Employee Organizations and various members of departmental management will be involved in such discussions.

Further, if department-specific issues arise with respect to institutions of higher education or independent entities such as the Attorney General, the Secretary of State, The State Treasurer, or the State Board of Education, such issues will be referred to the respective entity, but it is within the discretion of each such entity to determine whether to enter into department-wide negotiations. The Governor's Designee will offer to assist if the entity desires such assistance.

### **36. How are issues pertaining to a specific occupational group addressed?**

Where a single occupational group has an issue for discussion, the Governor's Designee, along with other state officials as appropriate, will confer with the Certified Employee Organization.

*Partnership Agreements that govern discussions of matters impacting Covered Employees in a single occupational group shall be negotiated with the Certified Employee Organization representing that occupational group ... and the Governor's Designee in concert with the executive officials charged with administering the issues subject to the Agreement .... Such a Partnership Agreement is subject to the approval of the Governor and other officials charged with administering the issues subject to the Agreement.*

**37. May pay or benefits be addressed in partnership discussions?**

Yes, but subject to several limitations. Specifically, the total compensation plan administered by the Colorado Dept. of Personnel and Administration is governed by state statute. No partnership agreement may be in conflict with the statutory provisions. Further, any agreement addressing compensation is subject to approval by the Executive Director of the Colorado Dept. of Personnel and Administration as well as the Governor. If any provisions of a partnership agreement have budgetary implications, they are subject to the authority of the Governor, and in some instances, the General Assembly.

For more information on the process for arriving at the annual total compensation plan, please see <http://www.colorado.gov/dpa/dhr/comp/pay.htm>.

One important element of the executive order provides, *Nothing in any Partnership Agreement may diminish the Governor's discretion to prepare his proposed budget, including setting the amount allocated to total employee compensation in that proposed budget.*

**38. What if the Certified Employee Organization and State management do not agree on a topic?**

The executive order provides that the Director of the Division of Labor or his designee shall provide mediation and other non-binding conflict-resolution services as needed.

Once an agreement is reached, *the terms of a Partnership Agreement may provide procedures for resolving disputes, including disputes over the interpretation and application of a Partnership Agreement. These dispute resolution procedures may include non-binding mediation and/or fact finding, but may not include binding arbitration.*

**For more information on the executive order on matters such as the role of the Director of the Division of Labor, mechanics of representation elections, or other details, please consult the 2007 Executive Order D 028 07 on the Governor's website,**

<http://www.colorado.gov/governor>.

**If you have any questions that have not been addressed above, you may pose them to your department's human resources office or send them to the Governor's Designee via:**

[Martin.Flahive@state.co.us](mailto:Martin.Flahive@state.co.us).