DEPARTMENT OF PERSONNEL
4 CCR 801 PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES

The purpose of Personnel Board Rules (indicated by cites beginning with "Board Rule," in order to avoid confusion with the Director's Administrative Procedures) and Director's Administrative Procedures is to establish simple and concise statewide human resource requirements that apply throughout the state personnel system. Rules adopted by the Board and procedures adopted by the Director require the formal rulemaking process defined in the Administrative Procedures Act. Operational detail and process and local practice are purposely excluded from this document.

Preamble

Unless otherwise noted in a specific provision, the State Personnel Board Rules were adopted by the State Personnel Board on April 19, 2005, pursuant to a Statement of Basis and Purpose dated April 19, 2005; and the State Personnel Director's Administrative 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 rulemaking by the Director and Board to amend Director's Administrative Procedures and Board Rules to amend 1-25,1-37.1, 1-38.2, 1-38.3, 1-43, 1-46, 1-54, 1-55, 1-56, 1-56.1, 1-61, 1-62.2, 1-62.3, 1-62.4, 1-64.1; 2-10(B); eliminate 2-11, 2-12 and 2-13; eliminate 3.25; amend 8-42, 8-46(A), 8-46.1, 8-53, 8-81(A) and (B); eliminate 8-53(B), 8-82 through 8-88; and amend 9-7. This version also reflects rulemaking to repeal and readopt Chapter 4 in its entirety, effective Jan. 2, 2013.

Chapter 1 Organization, Responsibilities, Ethics, Payroll Deduction, And Definitions

Authority for rules promulgated in this chapter is found in Colo. Const., art. XII, Sections 13, 14 and 15, §§24-50-101, 103, 104(8), 112.5, 116, 117, 124, 128, 129, 130, 132, 145, 24-2-103, 24-6-402, 24-72-201, and 24-18-101 through 205, C.R.S. Board rules are identified by cites beginning with "Board Rule".

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. The Board shall establish a cost-effective election process for those members elected by state employees. This process shall comply with Colorado Constitution and requirements of §24-50-103, C.R.S.

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 must be received in the Board's office at least 12 calendar days before the meeting. The party must provide the original and nine 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 must establish a written document specifying the appointing authority for each individual employee and this information must 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 work place, including communicating requirements and rights.

1-11. All appointing authorities, managers, and supervisors are accountable for compliance with these rules and state and federal law, and for reasonable business decisions, including implementation of other policy directives and executive orders.

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.

B. A personal services contract involving an employee shall not be used to evade overtime.

1-15. Employment with more than one department. An employee may be employed by and receive compensation from more than one department with advance written approval of the primary appointing authority. There must be a written agreement between the appointing authorities that specifies the terms and conditions of the arrangement including any overtime considerations. (Refer to the "Compensation" chapter.)

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 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 years. Administrative value is defined as a record that is less than five 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 10 business days. Failure to forward these records may result in liability for violation of any applicable laws or rules.

1-23. Official Personnel File. Each employee's official personnel file shall include the following and be retained 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 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 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 must include all related information up to the establishment of the eligible list. (1/2/13)

Human Resource Innovation Programs

Board Rule 1-26. A description of each Human Resource Innovation Program (HRIP) will be submitted by each department head to the Board or Director at 633 17th Street, Suite 1320, Denver, CO 80202, 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 description and submitting any modifications or revisions of the HRIP to the Board or Director commensurate with such changes.

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. (1/2/13)

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 or Provisional Appointments. A temporary appointment to a permanent position approved by the Director. A conditional appointment applies to a qualified certified employee who temporarily promotes into a permanent vacancy for which no eligible list exists. A provisional appointment applies to a qualified person outside of the state personnel system who is temporarily appointed to a permanent vacancy for which no eligible list exists. (3/15/11)

1-38.2. Conduct of comparative analysis. Refers to the portion of the selection process, which includes all assessment-related activities, processes or functions that are completed from the time the qualified applicant pool is identified to the creation of the ranked eligible list. (1/2/13)

1-38.3. Content of competitive assessment process. Refers to the subject matter of the examination. Scores and ranks are outcomes of the competitive assessment process and are not considered as conduct or content of an examination. (3/15/11)

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 the "Separation" chapter, containing the names of certified employees who meet one 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, in rank order, who have completed a comparative analysis and may be considered for appointment. Referrals are drawn from this list. (1/2/13)

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.

1-46. Examination. A numerical assessment of job-related competencies, knowledge, skills, abilities and job fit to screen applicants for the eligible list. (1/2/13)

Board Rule 1-47. Exempt Employee. One who is not eligible for overtime.

1-48. Full-Time. A position scheduled and budgeted for 2080 hours per fiscal year. Any schedule for less than 2080 hours is part time.

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 must 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. (1/2/13)

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. (1/2/13)

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. (1/2/13)

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. (1/2/13)

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.

1-60. 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 months or on an annual, seasonal basis. It may be a full- or part-time work schedule. (1/2/13)

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 analysisprocess resulting from a job announcement restricted to current state employees or former state employees separated from employment due to layoff. (1/2/13)

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. (1/2/13)

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. (1/2/13)

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 rank-ordered list provided to the appointing authority of the six highest ranking qualified applicants who have successfully completed any applicable comparative analysis process and who are to be considered by the appointing authority. (1/2/13))

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 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 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. Unique job requirements, in addition to the minimum requirements, necessary for a specific position.

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.

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 the following types of payroll deductions: (7/1/07)

A. Required by federal law or state statute (e.g., tax withholdings, garnishments, court-ordered child support); (8/1/08)

B. Authorized by federal or state statute for programs made available by a department or institution (e.g., employee benefits, “eco passes,” tax treatment elections); (8/1/08)

C. Expressly authorized for state sponsorship by executive order of the governor and available to all state employees (e.g., Colorado Combined Campaign);

D. For the purpose of facilitating the reimbursement of monies owed to the state from an employee (e.g., higher education tuition, uniforms, salary overpayments); or (8/1/08)

E. Authorized by the Director through a written application and approval process (e.g., employee organization membership). The Director will consider the following criteria in making this determination:

1. The cost or administrative burden to the state;
2. The legal status and purpose of the organization receiving the payroll deduction;
3. The deduction is not prohibited by law;
4. The organization and the purpose of the deduction have a reasonable relationship to state employment; and
5. Any other reasonably relevant factor.

All applications and employee requests for authorizations or terminations for payroll deductions shall be on forms and within time frames specified by the Director. Payroll deductions authorized by the Director pursuant to this rule are valid until revoked in writing by the Director, an authorized officer of the receiving organization, or the paying employee, except as otherwise required by law.

Chapter 2 Jobs

Authority for rules promulgated in this chapter is found in §§24-50-101(2)(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.

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 layoff section of the "Separation" chapter.

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(1A). 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; (1/2/13)

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 layoff section of the "Separation" chapter.

Chapter 3 Compensation

Authority for rules promulgated in this chapter is found in §§24-50-104 (1)(a), (b), (c), (e), (f), (4), (5), (6), (9), and 24-50-104.5(1), 109.5, 136, 137, and 208, C.R.S. Board rules are identified by cites beginning with "Board Rule".

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 12 months, subject to 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-year limitation on saved pay.

Compensation Rates

3-6. The Department of Personnel shall publish the annual compensation plan. Departments shall use an hourly rate based on an annual salary to compensate employees who do not work a predetermined or full schedule.

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 the "Separation" chapter. Base pay shall be moved to the maximum at the first available opportunity that does not cause a loss in the employee's pay. However, in no case will the employee's base pay remain above the grade maximum after three years from the action, even if it results in a loss in pay. (2/1/07)

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 3-4. (7/1/07)

1. System maintenance studies.
2. Upward, downward, or lateral movements.
3. Repealed. (8/1/08)
4. Changes in pay grade minimums and maximums to implement approved annual compensation changes to the pay structure.

5. Adjustments to the base pay of employees due to merit pay in approved annual compensation changes, subject to the new grade maximum and 3-19(C)(1)(a). (9/1/12)
6. Bring salaries to the new grade minimum as a result of compensation survey pay grade changes, except in disciplinary actions.
7. Non-base merit payments (based on new annual salary). (9/1/12)

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 and the best candidate cannot be obtained by hiring at the minimum of the pay grade.

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 requirements 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 this chapter.

3-11. When an unclassified position is brought into the state personnel system and the unclassified person is selected to fill the position, the base pay 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.

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 must 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 exceed the employee's current rate and 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.

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 shall be any rate between the employee's current rate and the grade maximum. In addition, in-range salary movements are subject to the provisions below. (8/1/08)

<u>In-Range Salary Movements</u>. 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 frequency is limited to one in-range salary movement in a 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 must 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, measures to ensure consistent use. The plan must be communicated within the department and a copy provided to the Director prior to implementation. If granted, there must 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.

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 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 must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent 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 must 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 10 percent or the maximum permitted by the department's policy on promotional pay, whichever is greater, and subject to the pay grade maximum.

C. Delayed Promotional Increase. Used when a promotion is made with no salary increase or partial salary increase because production expectations are unproven and/or funds may be unavailable at the time of promotion. This is a one-time base salary increase within 12 months of the date of promotion when funds become available and the employee's contributions are fulfilled. The intent to provide a later salary increase must be documented at the time of the promotion. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum amount permitted in 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.

D. New Hires. Used at the time an employee is hired when production expectations for critical skills are unproven and/or funds may be unavailable. This is a one-time base salary increase within 12 months of hire. The intent to provide a later salary increase must be documented at the time of hire. To be eligible, early satisfactory completion of specified training objectives must be documented. This is limited to a one-time increase up to 10 percent 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.

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 this chapter. Prior to the payment of merit pay, the Director shall specify and publish the percentage for any merit pay increase for applicable priority groups. Payments are effective on July 1. The employee must 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. (9/1/12)

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. For employees hired into the state personnel system during the performance evaluation cycle a prorated portion of any non-base building merit pay shall be provided. The proration shall be based on the number of calendar months worked. (9/1/12)

C. Base building Merit Pay (9/1/12)

Base building merit pay shall be a base building increase based on final performance evaluation and salary position within the pay range on June 1. (9/1/12)

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. If the final overall rating is exceptional, 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. (9/1/12)

b. If the final overall rating is other than exceptional, but not needs improvement, any remaining portion of the payment that would cause base pay to exceed the grade maximum shall not be paid. If the base pay is at the grade maximum or in saved pay above the maximum, the employee is ineligible for base building merit pay. (9/1/12)

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 (9/1/12)

Non-base building merit pay shall be a non-base building or one-time lump sum payment and shall be calculated after any annual compensation adjustments, including base building merit pay. (9/1/12)

1. Non-base building merit pay must 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)

a. An employee must 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. Merit pay from reversion (9/1/12)

Base building or non-base building merit pay may be provided to employees, at a department's discretion, 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. (9/1/12)

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 once in a 12-month period per employee. 9/1/12)

3. Base building merit pay increases funded from the department's state employee reserve fund shall not cause an employee's base pay to exceed the mid-point of the employee's pay range. (9/1/12)

F. Any department providing recommendations regarding the amount that should be appropriated for merit pay must send such recommendation to the director by June 1, unless otherwise approved by the director. (9/1/12)

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 must 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 12-month period. The complete award amount shall be no more than 10 percent of the first year's savings, not to exceed a total of $1,000 per employee.

B. Incentive plans implemented prior to August 1, 2008, remain in effect, but shall be submitted to the director upon request. New or modified incentive plans shall be submitted to the director for review prior to implementation. The director's review shall be completed within 90 days, unless the director requires further information. In the event the director finds at any time that an incentive plan is inconsistent with guidance, rule or law, the department will make the appropriate changes. Failure to provide the incentive plan to the director as required may result in revocation of the incentive plan and delegated authority to grant incentives.

C. The incentive plan must be communicated to all employees prior to use and on an ongoing basis.

D. Records on any aspect of incentives must be provided to the director in a timely manner upon request.

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 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 must be no lower than the minimum or higher than the maximum rates of the new grade and a new contract must 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

3-26. All employees are covered by the Fair Labor Standards Act (FLSA). Under FLSA, the state is considered to be a single employer. Employees cannot waive their rights under FLSA.

3-27. All full-time employees work a minimum of 40 hours during a standard workweek (168 consecutive hours in seven consecutive days). Appointing authorities may adopt different work periods for law enforcement and health care employees as permitted by federal law. (8/1/08)

3-28. Overtime is the time a non-exempt employee works in excess of the 40 hours during a standard workweek or in excess of established work hours in adopted work periods for law enforcement and health care employees. Such excess hours are paid at 1½ times the employee's regular hourly base pay rate, including applicable premium pay. Monetary payment must be made by the next regularly scheduled payday following the pay period in which it was worked. (8/1/08)

A. Overtime for non-exempt 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 must ensure that compensatory time is scheduled as soon as practical. Compensatory time shall not exceed 240 hours (or 480 hours for law enforcement) and any additional overtime must be paid at the next regular pay period. If a department wants to place limits on the accrual or payment of compensatory time, a policy must be developed and communicated prior to use and on an ongoing basis. Unused compensatory time at termination or transfer to another department must be paid at that time.

<u>Eligibility</u>

3-29. Department heads are responsible for determining if each position is exempt or non-exempt based on the actual duties performed regardless of class. Determinations must be entered into the payroll system and a record kept on file.

3-30. An exempt employee's pay is not subject to reduction except as follows. Deductions in increments of one day are allowed for a major workplace rule violation. Deductions are allowed for any amount of time if a leave of absence was not requested or was denied and accrued leave

is not used; or is covered by the Family and Medical Leave Act (FMLA); or accrued leave is exhausted; or for voluntary furlough. In the case of mandatory furloughs for budgetary reasons, exempt status is not changed, except for the workweek in which the furlough occurs and pay is reduced. Improper reductions make the employee non-exempt. (7/1/06)

3-31. Exempt employees shall not be granted extra pay for hours worked in excess of 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)

3-32. An employee may request a review of a decision regarding eligibility, calculation of overtime hours, and payment to the Director in accordance with the "Dispute Resolution" chapter.

Dual Employment

3-33. 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 is either the regular rate from one of the jobs or a weighted rate from both jobs. Work time from both jobs is combined to calculate overtime.

Work Hours

3-34. In order to minimize overtime liability, appointing authorities may deny, delay, or cancel leave. 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.

3-35. Compensatory time is not leave, but a form of compensation. Therefore, it is not included in the calculation of work hours for overtime purposes.

3-36. Overtime does not accrue until a non-exempt employee works more than the maximum hours allowed in a workweek or designated work period. All time worked must be recorded on a daily basis. Overtime is calculated based on the total time worked in the workweek or designated work period, rounded to the nearest quarter hour. If operational needs require an employee to regularly report to work early or leave late, that time is counted as work hours for weekly overtime purposes.

3-37. Essential, non-exempt 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.

3-38. Scheduled meal periods are discretionary. Scheduled meal periods are not work time and must be at least 20 minutes. However, if the employee is materially interrupted or not completely free from duties, the meal period is counted as work time.

3-39. Work breaks are discretionary. If granted, breaks of up to 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.

3-40. 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.

3-41. 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

3-42. FLSA requires that certain basic records be maintained for both exempt and non-exempt employees. Each department is accountable for maintaining those records. (7/1/07)

3-43. Time records must be certified by both the employee and the supervisor and are the basis for overtime calculation and compensation.

Other Premium Pay

3-44. Shift Differential is additional pay beyond base pay for employees working shifts. Eligible classes are published in the annual compensation 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.

3-45. 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 hours 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. (7/1/07)

3-46. 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 compensation 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. (7/1/07)

3-47. Second Domicile is additional discretionary pay up to 10 percent of base pay for employees who are required to maintain a second domicile for more than 10 consecutive calendar days while working out-of-state on official state business. The department head must authorize such payments.

3-48. Commission Award is non-base building pay in addition to base pay or other non-base building awards for employees in eligible classes and positions as approved by the Director, i.e., retail sales and collections. The amount of commission is paid according to a plan established by a department head and approved by the Director for individual or team performance.

3-49. 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 must be provided to the Director when requested.

3-50. 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 must 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 must 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 must 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 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 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 30 days but less than six months. The differential shall not exceed six 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; or,
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.

3-51. <u>Hazardous Duty</u> 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 must 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 compensation plan and, in combination with current base pay and other premium pay, cannot exceed a statutory lid in any given month.

Postemployment Compensation (9/1/12)

3-52. Postemployment compensation, or Voluntary separation incentives 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. Post employment 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 must establish a postemployment compensation plan before a department makes any separation incentive offers. (9/1/12)

3-53. Any total post employment compensation payment shall not exceed an amount equal to one week of an employee's salary for every year of his or her service, up to 18 weeks. Any additional limitations shall be established and published by the director, taking into consideration prevailing market practice and other factors. (9/1/12)

3-54 Severance pay is a discretionary financial payment that may be offered to certified employees separated from state service. (9/1/12)

3-55. The employee and department must execute a written contract before payment of any post employment compensation, voluntary separation incentive or severance payment. The contract must include the following provisions. (9/1/12)

1. A statement that the employee is required to pay all applicable taxes on the payment;
2. The employee's acknowledgement that the state will withhold taxes according to law before payment;
3. 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)
4. The date of the employee's last day of work;
5. An acknowledgement that no payment will be made until after the last day of work and compliance with other provisions of the contract; and,
6. Upon signature, a copy of each contract must be provided to the state personnel director. (9/1/12)
7. 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)

Chapter 4 Employment and Status

Authority for the rules promulgated in this chapter is found in Colo. Const. art. XII, Sections 13, 14 and 15, and §§24-50-109.5, 112.5, 114, 132, 136 and 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”, 4 CCR 801.

General Principles

Board Rule 4-1. 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. (1/2/13)

Board Rule 4-2. All applicants must 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. (1/2/13)

4-3. 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 State Personnel Director. (3/15/11)

4-4. 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. (1/2/13)

Board Rule 4-5. All applicants will be notified of their appeal rights in the job announcement in accordance. with federal and state law or the “Dispute Resolution” chapter. Such notice shall include appeal rights they may have ; the time frame for such an appeal; the address for filing the appeal; and the availability of any standard appeal form. All applicants must be notified of their elimination from consideration no later than 10 days after an accepted job offer. (1/2/13)

Board Rule 4-6. Persons with disabilities, in accordance with federal and state law, may request reasonable accommodation throughout the selection process. (1/2/13)

Job Announcement

4-7. Job announcements must 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. The appointing authority shall not utilize any method of appointment not disclosed in the job announcement unless the job announcement contains language stating that the vacancy may, at discretion of appointing authority, be filled by another method of appointment due to valid articulated business reasons. (1/2/13)

4-8. All job announcements must be posted for a reasonable amount of time and in locations where potential applicants might reasonably expect to find them and posted electronically in a manner prescribed by the State Personnel Director. Announcements shall specify the following:

A. The class to which the vacancy is classified within the state personnel system; the pay range or anticipated hiring pay rate for that classification; the working location for the vacancy; and the closing date for accepting applications for the vacancy;

B. The minimum qualifications for the vacancy;

C. The nature of required experience and/or education for the vacancy;

D. 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;

E. Any additional special qualifications for the vacancy;

F. Any preferred qualifications for the vacancy;

G. Any conditions of employment, including physical requirements or background check;

H. The documentation which must be submitted in order for the application to be reviewed and, if any forms must be completed, where those forms may be obtained and;

I. The address to which the application must be submitted. (3/15/11)

Board Rule 4-9. A department may request that the Director grant a residency waiver when the department can show there is an insufficient instate applicant pool.

If the Director denies a waiver, the department may submit the request to the Board within 10 days. (1/2/13)

Qualification Review

Comparative Analysis

4-10. 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 must be a professionally accepted standard that compares specific job-related knowledge, skills, abilities, behaviors and other competencies. Comparative analysis must meet professionally accepted standards for assessments of qualifications, competencies and job fit. (1/2/13)

4-11. Background investigations and physical or psychological examinations are allowed when validated by a competent job analysis or state or federal guidelines. (3/15/11)

4-12. 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, 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. (1/2/13)

4-13. All examinations and assessments are subject to review and approval by the Director. (1/2/13)

4-14. The appointing authority has the followingchoices:

1. Appoint an eligible candidate who is a transfer, non-disciplinary demotion or reinstatement;
2. Appropriate an existing eligible list if a re-employment list does not exist; or
3. 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. (1/2/13)

A. .

4-15. If the department initiates an examination , then:

A. The examination portion of the process must be completed;

B. The examinations scored in accordance with professional standards; and

C. The applicants ranked accordingly. (1/2/13)

4-16. 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. (1/2/13)

4-17. Applicants directly affected by the selection and comparative analysis process may file a written appeal with the Director in accordance with federal and state law or the "Dispute Resolution" chapter. (1/2/13)

Board Rule 4-18. 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. (1/2/13)

Board Rule 4-19. Any person currently or previously employed by the state of Colorado, not within the state personnel system, must 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. (3/15/11)

Employment Lists

4-20. If filling a vacancy from an employment list, employment lists must be used in the following order of priority: departmental reemployment, promotional, then open-competitive. (1/2/13)

4-21. An eligible list shall be considered established at the time when any and all applicable comparative analysis is completed. (1/2/13)

4-22. 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) a current eligible list of equal or higher priority exists for the position in question. (1/2/13))

4-23. Employees on a departmental reemployment list may limit their availability to specific locations and work schedules. Departmental reemployment lists last for one year. (1/2/13)

4.24. The duration of an open competitive or promotional eligible list shall be a minimum of 30 days, and that eligibility list may be extended by the appointing authority for up to 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 year of the initial expiration date of the list.

C. An appointing authority shall have the discretion to appropriate eligible lists for identical or highly similar positions justified through competent job analyses. (1/2/13)

4-25. Cancellation or expiration of a list does not affect the legal rights of employees on military leave. (3/15/11)

4-26. If the selection process results in fewer than six 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 must be administered and the results from both postings must then be integrated and ranked.

B. If any qualifications are changed, a new recruitment will be initiated. (1/2/13)

Board Rule 4-27. Addition of names and adjustment of rankings due to open, continuous recruitment shall not affect prior appointments or referrals. (3/15/11)

4-28. 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 <u>all</u> 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 meet the conditions of employment such as physical requirements, background check, or others as set forth in the job announcement;
4. 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;
5. 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 18 month period;
6. documented failure to demonstrate proficiency in a required job-related competency set forth in the job announcement;
7. documentation of unsatisfactory performance indicating an inability to perform in an area directly related to the job;
8. appointment to a position in the class for which a list was established; or
9. refusal of an appointment or condition(s) of employment previously indicated as acceptable. (1/2/13)

4-29. A person who has been removed from an employment list may appeal to the Board or request a review by the Director in accordance with federal and state law or the "Dispute Resolution" chapter. (1/2/13)

Referrals

4-30. If a departmental reemployment list exists, all those qualified are notified and referred in alphabetical order and no other employment lists are used. (1/2/13)

4-31. In the event of a tie, the referral list shall be comprised of only the six highest-ranking individuals, plus any individuals tyingwith those individuals. If a comparative analysis is not conducted because there are six or fewer qualified applicants, the referral list shall be comprised of those applicants. (1/2/13)

Board Rule 4-32. In the case of filling multiple vacancies within the same class, no more than the applicants with the six highest-ranking individuals 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 plus one additional candidate for every additional position. (1/2/13)

4-33. 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 must be notified of any contact information for the interview. (1/2/13)

4-34. 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 individuals plus any eligible veterans. If a numerical comparative analysis is used, the referral list shall only be comprised of the six highest-ranking individuals. (1/2/13)

4-35. Appointing authorities or their designees shall interview or make a reasonable attempt to interview all applicants on the referral list in compliance with state and federal law. (1/2/13)

4-36. Any additional evaluation or assessment conducted after the referral must be related to the job and administered to all applicants participating in the job interview process. (1/2/13)

Appointment

Board Rule 4-37. 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 25 mile radius of the employee's current work location, is longer than six months, and was not a condition of employment, the employee's name is placed on the reemployment list. (3/15/11)

4-38. A person may be reinstated to a related class with the same or lower pay range maximum than the previously certified class. (1/2/13)

4-39. Provisional appointments may be made only if the position cannot be filled conditionally. (3/15/11)

Employee 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. (3/15/11)

Board Rule 4-41. The probationary service period must not exceed 12 working months except as provided in the "Time Off" chapter 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. (3/15/11)

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 of:

A. At the discretion of the appointing authority, a current certified employee who voluntarily transfers to a position within the same class;

B. At the discretion of the appointing authority, a current certified employee or reemployment applicant who transfers to a position in a different class with the same pay range maximum;

C. A current certified employee or a reemployment applicant who promotes; and

D. Any reinstated applicant unless the appointing authority requires a probationary period. (3/15/11)

Board Rule 4-43. The trial service period must not exceed six working months, except as provided in the "Time Off" chapter 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. (3/15/11)

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. (3/15/11)

Board Rule 4-45. Early certification is not allowed if a selection appeal is pending. (3/15/11)

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. (3/15/11)

Temporary Status

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 months in any 12-month period. The nine-month limitation shall be inclusive of all temporary appointments and departments. Temporary appointments include appointments to temporary positions, conditional, provisional and substitute appointments. (1/2/13)

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 the “Personal Services Contracts” chapter. However, either a permanent part-time or temporary position may be used. (3/15/11)

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 s/he was 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. (3/15/11)

Board Rule 4-50. If a person with provisional status is subsequently appointed, to the position to which s/he was 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. (3/15/11)

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 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. (1/2/13)

Chapter 5 - Time Off

Authority for rules promulgated in this chapter is found in §§24-50-104 (1)(g) and (7), 24-50-109.5, 1-6-122, 1-7-102, 8-13.3-101 through 104, 12-34-101.5, 13-71-119 and 134, 19-5-211, 24-10-103, 24-11-101 and 112, 24-32-2202 and 2223 through 2228, 24-34-402.7, 24-50-401(1), 28-1-102 through 106, 28-3-601 through 612, 31-30-1131, and 24-50 Part 3, C.R.S. Board rules are identified by cites beginning with "Board Rule".

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 must 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 if family/medical leave (FML) is appropriate.

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.

C. Unauthorized use of any leave may result in the denial of paid leave and/or corrective or disciplinary action.

D. Requiring an employee to have a specified leave balance is prohibited except under a leave sharing program or a corrective or disciplinary action.

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 furlough. (5/1/10)

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 must 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 must be paid before the end of the fiscal year. (5/1/10)

5-5. Sick leave is for health reasons only, including diagnostic and preventative examinations, treatment, and recovery. Accrued sick leave may be used for the health needs of the employee, employee's child who is under the age of 18 or an adult child who is disabled, parent, spouse, injured military service member as established under rule 5-24, legal dependent, or a person in the household for whom the employee is the primary care giver. The appointing authority may require documentation of the familial relationship. (5/1/10)

A. Appointing authorities may send employees home and charge sick leave if an employee comes to work with what an appointing authority determines to be an illness or injury that either impacts the employee's ability to perform the job or the safety of others. Annual

leave shall be charged if sick leave is exhausted; unpaid leave if both annual and sick leave are exhausted.

Medical Certificates

5-6. Employees must provide a ***State of Colorado Medical Certificate*** form for an absence of more than three consecutive full working days for any health reason. Appointing authorities have the discretion to require certificates for absences of less than three days to determine if FML applies or when the appointing authority has a reasonable basis for suspecting abuse. Certification for FML may be required for the first leave request each fiscal year. Additional medical certificates may be required every 30 days or the time period established in the original certificate, whichever is longer, unless circumstances change or new information is received. (5/1/10)

A. This form must be completed by a health care provider. The completed form must be returned within 15 days from the appointing authority's request.

B. Failure to provide the certificate shall result in denial of leave and possible corrective/disciplinary action.

5-7. When an incomplete medical certificate is submitted, the employee must be allowed seven days to obtain complete information, absent reasonable extenuating circumstances. (5/1/10)

A. Only the human resources director or FMLA coordinator in the department's human resource office may have direct contact with an employee's health care provider following the seven days or sooner with the employee's written permission. Such contact is limited to verifying the authenticity and clarifying the content of a medical certificate.

5-8. When a certificate is submitted to demonstrate that the leave is FML-qualifying, the department has the right to request a second opinion on the **original** certificate. If the original 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 certificates for recertification purposes. (5/1/10)

5-9. If an absence is more than 30 days for the employee's own condition, the employee must provide a fitness-to-return certificate. The certificate may be required for absences of 30 days or less based on the nature of the condition in relation to the employee's job. The department may also require a certificate from employees taking intermittent family/medical leave every 30 days if there are reasonable safety concerns regarding the employee's ability to perform his or her job duties. (5/1/10)

A. When requested, employees must 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 a new medical certificate, or administrative discharge as defined in rule 5-10.

Exhaustion of Leave and Administrative Discharge

5-10. 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. (5/1/10)

A. The notice of administrative discharge must 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 or short-term disability leave (includes the 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.

C. A certified employee who has been discharged under this rule and subsequently recovers has reinstatement privileges.

5-11. (5/1/10)

Monthly Leave Earning, Accrual, Payout, and Restoration for Permanent Employees

Annual Leave				**Sick Leave**			
Years of Service*	**Hrs./Mon.**	**Max. Accrual****	**Payout**	**Hrs./Mon.**	**Max. Accrual***	**Restoration**	**Payout**
1st through 5th	8	192 hrs.	Upon termination or death, unused leave is paid out up to the maximum accrual rate.	6.66	360 hrs.	Previously accrued sick leave up to 360 hrs. is restored when eligible for reinstatement or reemployment.	Upon death or if eligible to retire, 1/4 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.
6th through 10th	10	240 hrs.					
11th through 15th	12	288 hrs.					
16th and above	14	336 hrs.					

* Years of service is computed from the 1st calendar day of the month following hire unless the employee began work on the 1st working day (then include that month). 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 amounts are forfeited each 7/1.

* Over-accrued sick leave up to 80 hrs. is converted to annual leave each 7/1 on a 5:1 ratio (5 hrs of sick converts to 1 hr. annual leave). An employee may have an individual maximum accrual rate that is greater than 360 hours if continuously employed in the state personnel system prior to 7/1/88 (6/30/88 accrual plus 360 hrs.).

General Provisions:

Employees must 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 this chapter. A terminating employee shall be compensated for leave earned through the last day of employment.

Part-time employees who work regular, non-fluctuating schedules earn leave on a pro-rated basis based on the percentage of the regular appointment, rounded to the nearest 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 worked by the number of work hours in the 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.

Leave payouts at separation are calculated using the annualized hourly rate of pay.

Borrowing against any leave that may be earned in the future or "buying back" leave already used is not allowed.

Forfeiture of leave as a disciplinary action or a condition of promotion, demotion, or transfer is not allowed.

Use of annual leave cannot be required for an employee being laid off.

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.

STD: Employees are required to use paid leave during the 30-day waiting period for short-term disability benefits, including the use of accrued annual leave once sick leave has been exhausted. Any remaining sick leave beyond the 30-day waiting period must be exhausted prior to eligibility for benefits payments.

Leave Sharing

5-12. Leave sharing allows for the transfer of annual leave between permanent state employees for an unforeseeable life-altering event beyond the employee's control, subject to the discretionary approval of a department head. Departments must 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. (5/1/10)

5-13. Employees must have at least one 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 must first exhaust all applicable paid leave and compensatory time and must not be receiving short-term disability or long-term disability benefits. The transfer of donated leave between departments is allowed only with the approval of both department heads.

Holiday Leave

5-14. Permanent full-time employees on the payroll when the holiday is observed are granted eight hours of paid holiday leave (prorated for part-time work or unpaid leave in the month) to observe each legal holiday designated by law, the Governor, or the President. Appointing authorities may designate alternative holiday schedules for the fiscal year. (5/1/10)

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 must be open and at least minimally operational for both days and the employee must have work to perform.

B. Each department shall establish an equitable and consistent policy to ensure that all permanent employees are awarded their full complement of holidays.

Other Employer-Provided Leaves

5-15. The types of leave in this section do not accrue, carry over, or pay out. (5/1/10)

5-16. Bereavement leave provides up to 40 hours of paid leave to permanent employees at the time of death of a family member or other person. Employees are responsible for requesting the amount of leave needed. The appointing authority authenticates the relationship and grants the leave requested. (5/1/10)

5-17. Military leave provides up to 15 paid workdays 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 after exhaustion of the 15 workdays. The employee may request the use of annual leave before being placed on unpaid leave. (5/1/10)

A. In the case of a state emergency, the employee must return upon release from active duty. In the case of federal service, the employee must 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.

5-18. Jury leave provides paid leave to all employees; however, temporary employees receive paid leave for a maximum of three days of jury leave. Jury pay is not turned over to the department. (5/1/10)

5-19. 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 must consider prudent use of taxpayer and personal services dollars and the business needs of the department. 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. (5/1/10)

A. Administrative leave that exceeds 20 consecutive working days must be reported to the department head and the Director.

B. An appointing authority may grant administrative leave up to five days for local or 15 days for national emergencies per fiscal year to employees who are certified disaster service volunteers of the American Red Cross.

C. If a department head adopts a policy granting one period of administrative leave for the initial call up to active military service in the war against terrorism, it shall not exceed 90 days and applies after exhaustion of paid military leave. It 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 must furnish proof of military pay and allowances. This leave does not apply to regular military obligations such as the annual encampment and training.

D. A department shall adopt a policy to address whether or not to grant administrative leave for employee participation in community or school volunteer activities.

5-20. Administrative leave must be granted for the following.

A. Two hours to participate in general elections if the employee does not have three hours of unscheduled work time during the hours the polls are open.

B. Up to two days per fiscal year for organ, tissue, or bone donation for transplants.

C. To serve as an uncompensated election judge unless a supervisor determines that the employee's attendance on Election Day is essential. The employee must provide evidence of service.

D. Up to 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.

5-21. 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. Unpaid leave is calculated based on the annualized hourly rate. (5/1/10)

A. Short-term disability (STD) leave is a type of unpaid leave of up to six months while either state or PERA STD benefit payments are being made. To be eligible for this leave, employees must have one year of service and an application for the STD benefit must be

submitted within 30 days of the beginning of the absence or at least 30 days prior to the exhaustion of all accrued sick leave. The employee must also notify the department at the same time that a benefit application is submitted.

B. Voluntary furlough is unpaid job protection granted for up to 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. Victim protection leave is unpaid job protection granted for up to 24 hours (prorated for part-time employees) per fiscal year for victims of stalking, sexual assault, or domestic abuse or violence. An employee must have one year of state service to be eligible and have exhausted all annual and, if applicable, sick leave. All information related to the leave shall be confidential and maintained in separate confidential files with limited access. 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.

D. Repealed pursuant to SB11-78. (5/13/11)

5-22. Parental Academic leave provides up to 18 hours (prorated for part-time) in an academic year for parents or legal guardians to participate in academic-related activities. Those activities are parent-teacher conferences or meetings related to special education services, response to interventions, dropout prevention, attendance, truancy, and disciplinary issues. A department shall adopt and communicate a policy on whether the leave will be unpaid or paid. If paid, the policy shall address the amount and type of paid leave, specifically the substitution of annual leave or use of administrative leave. (5/1/10)

Family/Medical Leave (FML)

5-23. The state is considered a single employer under the Family and Medical Leave Act (FMLA) and complies with its requirements, as well as the following rules for all employees in the state personnel system. Family/medical leave cannot be waived. (5/1/10)

5-24. FML is granted to eligible employees for: (1) birth and care of a child and must be completed within one year of the birth; (2) placement and care of an adopted or foster child and must be completed within one year of the placement; (3) the serious health condition of an employee's parent, child under the age of 18 or an adult child who is disabled, or spouse for physical care or psychological comfort; (4) an employee's own serious health condition; (5) active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or, (6) 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 5 years of the beginning of that treatment. Definitions of a serious health condition and health care provider are in the "Definitions" section of the "Organization, Responsibilities, Ethics, and Definitions" chapter. (5/1/10)

5-25. To be eligible, an employee must have 12 months of total state service as of the date leave will begin, regardless of employee type. A state temporary employee must also have worked 1250 hours within the 12 months prior to the date leave will begin. Time worked includes overtime hours. (5/1/10)

A. Full-time employees will be granted up to 520 hours per fiscal year. 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 and is subject to other rules in these chapters.

5-26. Military caregiver leave is a one-time entitlement of up to 1040 hours (prorated for part-time) in a single 12-month period starting on the date the leave begins. While intermittent leave is permitted, it does not extend beyond the 12-month period. In addition, the combined total for military caregiver and all other types of FML shall not exceed 1040 hours. (5/1/10)

5-27. All other types of leave, compensatory time, and make whole under workers' compensation run concurrently with FML and do not extend the time to which the employee is entitled. The employee must 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. An employee cannot be required to accept a temporary "modified duty" assignment even though workers' compensation benefits may be affected. (5/1/10)

5-28. Unpaid leave rules apply to any unpaid FML except the state continues to pay its portion of insurance premiums. An employee's condition that also qualifies for short-term disability benefits must comply with the requirements of that plan.

5-29. Employer Requirements. It is the appointing authority's responsibility to 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. (5/1/10)

5-30. Employee Requirements. Written notice of the need for leave must be provided by the employee 30 days in advance. If an employee becomes aware of the need for leave in less than 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 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)

5-31. 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)

5-32. Employees shall provide proper medical certification, including additional medical certificates and fitness-to-return certificates as prescribed in rules 5-6 through 5-9. If the employee does not provide the required original and additional medical certificates, the leave will not qualify as FML and will be denied. (5/1/10)

5-33. Benefits coverage continues during FML. If the employee is on paid FML, premiums will be paid through normal payroll deduction. If the FML is unpaid, the employee must pay the employee share of premiums as prescribed by benefits and payroll procedures. (5/1/10)

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 must be given an opportunity to fulfill the requirement. (5/1/10)

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 and the appointing authority may use rule 5-10 subject to any applicable ADA provisions.

B. The employee does not have restoration rights if the employment would not have otherwise continued had the FML leave not been taken, e.g., discharge due to performance, layoff, or the end of the appointment.

5-35. FML does not prohibit adverse action that would have otherwise occurred had the leave not been taken. (5/1/10)

5-36. The use of FML cannot be considered in evaluating performance. If the performance plan includes an attendance factor, any time the employee was on FML cannot be considered. (5/1/10)

5-37. Records. Federal law requires that specified records be kept for all employees taking FML. These records must be kept for three years. Any medical information must be maintained in a separate confidential medical file in accordance with ADA requirements and chapter 1. (5/1/10)

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 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 90 occurrences of injury leave an employee still is unable to work, the employee is placed on "make whole", using sick leave first, then annual leave. 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.

B. The appointing authority may invoke rule 5-10 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 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.

D. If an employee has a compensable injury or illness, but the first 24 hours are not paid for by the provider, the employee shall not be entitled to or granted injury leave for those 24 hours.

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.

Chapter 6 Performance

Authority for rules promulgated in this chapter is found in §§24-50-104(1)(c) and (c.5), and 24-50-125, 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. The performance management system does not apply to employees in the senior executive service or medical plan. Departments must develop a performance management program that includes the dispute resolution process and is approved by the Director before implementation. All employees shall be evaluated, in writing, at least annually based on the past year's performance. 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 30 days of the effective date of the move. No evaluation is required when an employee retires from employment in the state personnel 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 department's performance management component must include the following. (8/1/08)

A. A detailed training plan for employees and raters. Training is mandatory for all raters.

B. Incorporate into each individual performance plan and evaluation the statewide, uniform core competencies defined by the Director. The statewide, uniform core competencies cannot be disregarded in the final overall rating for each employee.

C. Develop a performance evaluation form.

D. The statewide uniform performance cycle shall be April 1 to March 31. (7/1/06)

E. A planning meeting with the employee that shall occur by the date specified in the department's performance management program. (7/1/07)

F. Allow for coaching and feedback during the performance cycle including at least one documented progress review.

G. Specify whether the performance evaluations are numerical, qualitative, or a combination that conforms to one of the performance rating levels. The Director shall define the performance rating levels and publish these standard definitions in written directives. A department's performance management program and forms shall contain the standard

definitions. Departments may further define the levels in relation to mission and operational needs providing that such expansion falls within these required definitions. Beginning with the performance cycle on April 1, 2007, for merit pay payable on July 1, 2008, three rating levels will be used. (9/1/12)

H. Shall not establish a quota for the number of employees allowed to receive any of the performance ratings.

I. Develop an accountability component to ensure compliance with the performance management system and the department's program. Such programs shall specify the sanctions, including those required by these provisions and statute, to be imposed for <u>any</u> rater employed by the state who fails to complete the performance plan or evaluation. (7/1/07)

J. Repealed. (7/1/07)

1. Repealed. (7/1/07)

K. 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.

6-5. Designated raters shall be evaluated 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 achievement pay. If the individual performance plan or evaluation is not completed within 30 days of the corrective action, the designated rater shall be disciplinarily suspended in increments of one workday following the pre-disciplinary meeting. (7/1/07)

A. A reviewer must 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. A needs improvement performance rating shall result in a performance improvement plan or a corrective action and a reasonable amount of time must be given to improve, unless the employee is already under corrective or disciplinary action for the same performance matter. A performance improvement plan is not a corrective action. If performance is still unsatisfactory at the time of reevaluation under a performance improvement plan, a corrective action shall be given. If performance is still unsatisfactory at the time of reevaluation under a corrective action, the appointing authority may take disciplinary action up to and including demotion or termination.

6-7. Each department head will report required information to the Director by the specified deadline.

Corrective And Disciplinary Actions

Board Rule 6-8. 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 6-9. The decision to take corrective or disciplinary action shall be based on the nature, extent, seriousness, and effect of the act, the error or omission, type and frequency of previous unsatisfactory behavior or acts, prior corrective or disciplinary actions, period of time

since a prior offense, previous performance evaluations, and mitigating circumstances. Information presented by the employee must also be considered.

Board Rule 6-10. When considering discipline, the appointing authority must meet with the certified employee to present information about the reason for potential discipline, disclose the source of that information unless prohibited by law, and give the employee an opportunity to respond. The purpose of the meeting is to exchange information before making a final decision. The appointing authority and employee are each allowed one representative of their choice. Statements during the meeting are not privileged.

A. When reasonable attempts to hold the meeting fail, the appointing authority must send a written notice, to the last known address of the employee, advising the employee of the possibility of discipline and stating the alleged reasons. The employee has 10 days from receipt of the notice to respond in writing. If the employee refuses to accept the notice, a dated return receipt from a mail carrier is conclusive proof of the attempt to deliver and the period to respond begins on that date.

Board Rule 6-11. Corrective action is intended to correct and improve performance or behavior and does not affect current base pay, status, or tenure. It shall be a written statement that includes the areas for improvement; the actions to take; a reasonable amount of time, if appropriate, to make corrections; consequences for failure to correct; and a statement advising the employee of the right to grieve and the right to attach a written explanation. It may also contain a statement that the corrective action will be removed from the official personnel records after a specified period of satisfactory compliance. A removed corrective action cannot be considered for any subsequent personnel action.

Board Rule 6-12. Disciplinary actions may include, but are not limited to: 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 12 months; prohibitions of promotions or transfers for a specified period of time; demotion; dismissal; and suspension without pay, subject to FLSA provisions. Administrative leave during a period of investigation is not a disciplinary action. At the conclusion of discipline involving temporary reductions in base pay, it shall be restored as if the discipline had not occurred. Reasons for discipline include:

1. failure to perform competently;
2. willful misconduct or violation of these or department rules or law that affect the ability to perform the job;
3. false statements of fact during the application process for a state position;
4. willful failure to perform, including failure to plan or evaluate performance in a timely manner, or inability to perform;
5. final conviction of a felony or other offense of moral turpitude that adversely affects the employee's ability to perform the job or may have an adverse effect on the department if employment is continued. Final conviction includes a no contest plea or acceptance of a deferred sentence. If the conviction is appealed, it is not final until affirmed by an appellate court; and,
6. final conviction of an offense of a Department of Human Services' employee subject to the provisions of §27-1-110, C.R.S. Final conviction includes a no contest plea or acceptance of a deferred sentence. If the conviction is appealed, it is not final until affirmed by an appellate court.

A. An employee who is charged with a felony or other offense of moral turpitude that adversely affects the employee's ability to perform the job or may have an adverse effect on the department may be placed on indefinite disciplinary suspension without pay pending a final conviction. If the employee is not convicted or the charges are dismissed, the employee is restored to the position and granted full back pay and benefits. Department of Human Services' employees charged with an offense as defined in §27-1-

110, C.R.S., may be indefinitely suspended without pay pending final disposition of the offense.

B. If the Board or administrative law judge finds valid justification for the imposition of disciplinary action but finds that the discipline administered was arbitrary, capricious, or contrary to rule or law, the discipline may be modified.

Board Rule 6-13. Corrective and disciplinary actions are subject to the “Dispute Resolution” chapter. An appointing authority who has decided to discipline may also discuss alternatives with the employee in an attempt to reach a mutually acceptable resolution. If no resolution is reached, the employee retains the right to appeal. When resigning in lieu of disciplinary action, the employee forfeits the right to file any appeal.

Board Rule 6-14. The person conducting the meeting is responsible for the decision to take disciplinary action. The decision is made after consideration of all written and verbal information collected.

Board Rule 6-15. A written notice of disciplinary action must be sent to the employee's last known address, by certified mail, or may be hand-delivered to the employee. The employee must receive the notice no later than five days following the effective date of the discipline. The notice must state the specific charge, the discipline taken, and right to appeal, including the time frame for such an appeal, and the Board's address and telephone and facsimile numbers for filing the appeal. Employees may submit a written statement to be attached to disciplinary action. (1/1/07)

A. If the employee refuses to accept the notice, a dated return receipt from a mail carrier is conclusive proof of the attempt to deliver.

Chapter 7 Separation

Authority for rules promulgated in this chapter is found in Colo. Const. art. XII, Sections 13, 14 and 15; §§ 24-50-109.5, 124, 126 and 136, C.R.S. Board rules are identified by cites beginning with "Board Rule".

General Principles

Board Rule 7-1. The appointing authority must communicate, or make a good-faith effort to communicate, with an employee before conducting any involuntary separation. The communication may be oral or written, and must provide an opportunity for the appointing authority and employee to exchange information about the separation.

Board Rule 7-2. The State of Colorado seeks to promote progressive employment practices. As such, the Board strongly encourages the Governor, Director, and all appointing authorities to consider alternatives to minimize or avoid the need for layoffs of employees in the state personnel system including, but not limited to, placement into vacant positions for which the laid off or displaced employees are qualified but for which they do not have retention rights, retraining, voluntary reduction in hours or pay, job-sharing, voluntary unpaid leave, voluntary furloughs, and voluntary separation incentives. (10/1/07)

Board Rule 7-3. Department heads shall administer the layoff process for any affected employee in accordance with these rules. Appointing authorities cannot use the layoff process as a substitute for disciplinary or corrective action. The layoff process should not prevent or interfere with other personnel actions.

Resignation

Board Rule 7-4. An employee must give notice of resignation directly to the appointing authority at least 10 working days before its effective date, unless the employee and appointing authority mutually agree to less time. Failure to provide written notice, as required by § 24-50-126(1), C.R.S., may result in a delay in payout of leave and forfeiture of reinstatement privileges. If the notice is oral, the appointing authority shall provide written confirmation as soon as possible. If the employee believes the resignation was coerced or forced, the employee has 10 days from the date of the resignation to appeal to the Board, except that an employee cannot appeal a resignation that is tendered in lieu of disciplinary action. Upon receipt of any written notice of resignation or upon an appointing authority providing a written confirmation of an oral resignation, an employee must be notified, in writing, of the right to appeal a coerced or forced resignation, including the time for such an appeal, and the Board address and telephone and facsimile numbers for filing the appeal. The 10 days for an employee to appeal to the Board an alleged coerced or forced resignation shall be from the date of receipt by the employee of the notification of appeal rights. If an employee tenders a resignation in lieu of disciplinary action, the employee shall be notified in writing that he or she has waived his or her right to appeal the resignation to the Board. (7/1/09)

Board Rule 7-5. An employee who has submitted a notice of resignation at least 10 working days before its effective date may withdraw a resignation by the close of two business days after giving notice of resignation. The day that notice of resignation is given shall not be counted. A business day shall be the normal hours of operation for the department or employee's division. However, if the department or employee's division operates on a 24-hour basis, the business day shall end at midnight. The appointing authority must approve a timely withdrawal of resignation. Approval of a request to withdraw a resignation when that request is made more than two business days after the notice of resignation is within the discretion of the appointing authority. (10/1/07)

Board Rule 7-6. If an employee is absent without notice for five or more scheduled consecutive working days and has not contacted the supervisor or appointing authority to provide information

about the reason for the absence, the appointing authority may construe that absence as an automatic resignation. The appointing authority shall give the employee written notice, by certified mail, of the effective date of the employee's resignation. The employee is ineligible for reinstatement.

Layoff Principles

Board Rule 7-7. The only reasons for layoff are lack of funds, lack of work, or reorganization. These rules apply to any reduction in force that results in the elimination of one or more positions regardless of the reason for layoff. (10/1/07)

A. For any and all layoffs, department heads have the discretion initially 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 determining which classes or class series will best help the department meet its mission, the level of staffing by various classifications and/or class series and the agency functions to be staffed, either by facility location or department-wide, and must meet any constitutional or statutory mandates. A department head may delegate this authority to make any of the business decisions to subordinate appointing authorities within the department. Such delegation must be in writing and describe the parameters of the business decisions to be made by the subordinate appointing authority.

B. Layoff Plan: For any and all layoffs, after making its business decisions and ten days prior to issuing the first layoff notice, the department shall post a Layoff Plan, signed by the Executive Director, head of a principal department or designee, both in a conspicuous place where all impacted parties have access to view the posting and on the department's internet or intranet websites. The purpose of the Layoff Plan is to facilitate strategic planning prior to the abolishment of any positions and to provide an open and transparent explanation for the elimination of positions and/or services. The Layoff Plan shall include the following: a description of the planned changes in the fundamental structure, positions, or functions accountable to one or more appointing authorities; an organizational chart setting out the planned changes in the fundamental structure, positions, or functions accountable to one or more appointing authorities; the reasons for the change; the anticipated benefits and results, including any cost savings; a general description of the expected changes and their effects on employees; a description of how the work performed by the eliminated positions will be absorbed by the department; a listing of the classes in which positions will be abolished as contemplated in the Layoff Plan; and, if there have been any modifications to the special qualifications for positions affected by the Layoff Plan within sixty days or less prior to publication of the Layoff Plan, a list of such positions.

1. When a function and position are transferred to another department, the employee occupying the position transfers.

Board Rule 7-8. After an appointing authority has made the initial business decisions and posted the department's Layoff Plan, the layoff of individual employees and the subsequent calculation of their retention rights must be made in accordance with the Board rules setting forth the priorities for determining layoff and retention rights. (10/1/07)

7-8.1 The layoff of certified employees who, on or before January 1, 2013, are within five years from being eligible for full retirement pursuant to section 24-51-602 (1)(a) C.R.S. is to be in accordance with the board rules within this chapter. Layoff decisions for all other certified employees after September 1, 2012 is to be in accordance with this chapter, except as in Board Rule 7-9, Board Rule 7-10, Board Rule 7-11, Board Rule 7-12, Board Rule 7-13, Board Rule 7-18 and as set forth below; (9/1/12)

A. Departments shall establish a matrix for each layoff which gives consideration to total state service and performance evaluations in a consistent manner for all affected employees in a retention area. (9/1/12)

Determining Priorities for Layoff and Retention Rights

Board Rule 7-9. In making both layoff and retention rights decisions, departments shall first use time bands to determine seniority as set forth below in Board Rule 7-10. After placing employees into time bands, departments shall then apply a matrix, prepared and posted as set forth below in Board Rule 7-11. For purposes of this chapter, the term "displaced" shall include both employees who are initially laid off under the Layoff Plan and employees who, as the result of other employees exercising their retention rights, are laid off. (10/1/07)

Board Rule 7-10. Time Bands: Time bands for each of the affected classes are established for three-year periods based on seniority. The three-year period begins with the calendar year in which the layoff notice is given and extends backward, e.g., a notice issued in 2007 creates the most junior time band of 2005-2007, the next time band would be 2002-2004. For each affected class set out in the Layoff Plan, employees in the most junior time band must be displaced before employees in more senior time bands. (10/1/07)

A. Seniority is the calendar year in which continuous state service began, plus up to 10 additional years (rounded to the next whole year for partial years) of military service for those eligible for veteran's preference.

B. Continuous state service includes permanent status and state employment outside the state personnel system. An employee who has a break in service of 90 days or less, time on a departmental reemployment list or waiting for retention rights, or approved leave receives credit for continuous state service during those periods. If an employee has a break in service of more than 90 days, previous state service does not count toward seniority during layoff.

Board Rule 7-11. Matrix: The purpose of the matrix is to rank employees within the time bands. The department head must establish the matrix for the entire department. The matrix must be consistently applied throughout each retention area within the department. The matrix must be communicated to all employees at least 15 days before the first layoff notice is issued. Employees with lower matrix rankings in the time band must be displaced before employees with higher matrix rankings, except, as set forth in art. XII, Section 15 of the Colorado Constitution, no veteran can be displaced before a non-veteran regardless of rank. (10/1/07)

A. The matrix must give at least 51 percent of the total value to performance measured by the average of the latest three years' annual performance ratings. Each department must establish a consistent numerical value for each level of performance designated by the State Personnel Director. If an employee does not have performance ratings for any of the past three years, any missing rating is considered to be the average of the numerical values assigned to the available ratings in the past three years.

B. If there is a tie under the department's matrix, 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 the affirmative action program established by the State Personnel Director pursuant to § 24-50-101(3)(e), C.R.S.

7-11.1 The purpose of a matrix is to rank employees within a retention area. The department head must establish the matrix for employees potentially covered by the layoff plan. The matrix must be consistently applied throughout each retention area within the department. The matrix must be communicated to all affected employees at least 15 days before the first layoff notice is issued.

Employees with lower matrix rankings must be displaced before employees with higher matrix rankings, except as set forth in Art. XII, Section 15 of the Colorado Constitution, no veteran can be displaced before a non-veteran regardless of rank. (9/1/12)

A. The matrix must give consideration to total state service and performance evaluations in a consistent manner for all affected employees in a retention area. Each department must establish a consistent numerical value for each performance rating level designated by the state personnel director. (9/1/12)

B. If there is a tie under the department's matrix, 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 affirmative action program established by the state personnel director pursuant to § 24-50-101(3)(E), C.R.S. (9/1/12)

7-11.2 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 displaced person into a vacant funded position for which they qualify. An appointing authority should consider prior experience, past performance and tenure in making such decision. (9/1/12)

Board Rule 7-12. Trial service employees whose performance is satisfactory are treated as if certified in the trial service class during the layoff process. Conditional employees have retention rights to their previously certified class. (10/1/07)

Board Rule 7-13. Full-time certified employees whose positions are reduced to part time are eligible for retention rights. Full-time employees shall be offered other full-time positions before part-time. Part-time certified employees whose positions are increased to full time are eligible for retention rights. Part-time employees shall be offered other part-time positions in the current certified class then offered full-time positions in the current certified class, prior to the offer of retention rights in any class or class series to which previously certified. A full-time employee who accepts a part-time position and a part-time employee who accepts a full-time position may choose to be placed on a departmental reemployment list. (10/1/07)

Notice Requirements

Board Rule 7-14. The department must provide written notice to certified employees who are to be laid off at least 45 calendar days before the layoff is effective. The layoff notice must give the employees at least three working days from the date of delivery to state whether they want the department to determine their retention rights. If the department offers retention rights, it must give the employees at least three working days to accept or reject the offer. The layoff notice may be hand-delivered directly to the employee or sent by certified mail to the employee's last known address, in which case it is deemed delivered when it is actually received or five days after the certified mailing, whichever is earlier. In addition, notification by email shall be sent to the employee, if the employee has a state email address. (10/1/07)

A. The department must provide written notice to certified employees who are being displaced by another employee at least 10 business days before the displacement. A displaced certified employee who is separated shall be paid for at least 22 working days after receipt of the notice of displacement.

B. The department must provide written notice to non-certified employees who are to be laid off at least 10 business days before the layoff is effective.

Retention Areas

Board Rule 7-15. (7/1/09)

A. A certified employee may exercise retention rights within the principal department in which the certified employee is employed.

B. Institutions of higher education have the following separate retention areas: each state college, each community college, each university, each campus of the University of Colorado, University of Colorado system administration, each junior college, Auraria Higher Education Center, and central staff of Community Colleges of Colorado.

C. The Department of Higher Education shall be a separate retention area in which certified employees in central staff and Colorado College Access Network shall have retention rights.

D. The Colorado Historical Society shall be a separate retention area in which certified employees employed therein shall have retention rights.

E. For purposes of these layoff rules, the Governor's Office, and any units or offices created within the Governor's office, shall be considered a retention area.

Board Rule 7-16. A department, upon approval of the Board, may limit retention rights to major divisions of the department only if its department head requests the limitation and the Board approves that request at least thirty days in advance of the posting of the Layoff Plan required by Board Rule 7-7. Any request to limit retention rights must set forth a reasonable basis for the request. (10/1/07)

Board Rule 7-17. Any request to limit retention areas must be submitted in writing on or before the twelfth day before the monthly Board meeting at which the request will be considered. A copy of the request to limit retention areas shall be provided to all affected employees by mail to their home addresses and by email to their state email address, if any, on or before submittal of the request to the Board. Any parties opposing such a request may either submit a written opposition prior to the Board meeting or testify before the Board at the time of the Board meeting. The requestor may either submit a written response to the opposition or testify before the Board at the time of the Board meeting. (10/1/07)

Retention Rights

Board Rule 7-18. An employee must meet the minimum qualifications and any bonafide special qualifications in order to have retention rights to a position. Departments may not modify special qualifications of any position in a class series impacted by a layoff after the publication of the Layoff Plan. Certified employees can displace certified employees in more junior time bands. If there are no junior time bands, certified employees can displace lower-ranked certified employees in the same time band. (7/1/09)

A. The department shall offer retention rights in the following priority.

1. First, to any funded vacant position in the current certified class. If there are no funded vacant positions, then positions occupied by the following types of employees are offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the current certified class and the occupants of those positions are certified, then the lowest ranked employee within the most junior time band shall be displaced first.
2. If there are no available funded vacant or occupied positions in the current certified class, then a funded vacant position in a previously certified class at the same maximum pay rate. If there are no funded vacant positions, then positions occupied by the following types of employees shall be offered in the following

order: provisional, probationary, conditional, certified. If there are multiple occupied positions in a previously certified class at the same maximum pay rate and the occupants of those positions are certified, then the lowest ranked employee within the most junior time band shall be displaced first.

3. If there are no available funded vacant or occupied positions in the current or a previously certified class at the same maximum pay rate, then the highest level demotion in a vacant position in the current or a previously certified class series. If there are no vacant positions, positions occupied by the following types of employees shall be offered in the current or a previously certified class series in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the highest level demotion in the current or a previously certified class series and the occupants of those positions are certified, then the lowest ranked employee within the most junior time band shall be displaced first. An employee can displace another employee only if the displacing employee has been certified in the class.

B. For those departments with multiple work locations throughout the state, the department shall offer retention rights in the following order:

1. Within a 75-mile radius of the employee's current work location, funded vacant positions in the current certified class.
2. If there are no funded vacant positions in the current certified class, positions occupied by the following types of employees in the current certified class within a 75-mile radius are offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the current certified class within the 75-mile radius, and the occupants of those positions are certified, then the lowest ranked employee within the most junior time band shall be displaced first.
3. If there are no available funded vacant or occupied positions in the current certified class within a 75-mile radius, then a funded vacant position in a previously certified class at the same maximum pay rate. If there are no funded vacant positions, then positions occupied by the following types of employees shall be offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in a previously certified class at the same maximum pay rate and the occupants of those positions are certified, then the lowest ranked employee within the most junior time band shall be displaced first.
4. If there are no available funded vacant or occupied positions in the current or a previously certified class at the same maximum pay rate within a 75-mile radius, then the highest level demotion within a 75-mile radius in a vacant position in the current or a previously certified class series. If there are no vacant positions, positions occupied by the following types of employees shall be offered in the current or a previously certified class series in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the current or a previously certified class series within the 75-mile radius, and the occupants of those positions are certified, then the lowest ranked employee within the most junior time band shall be displaced first. An employee can displace another employee only if the displacing employee has been certified in the class.
5. If the only retention opportunity within a 75-mile radius is a demotion, then in addition to the offer of that demotion, the employee shall be given retention rights outside of the 75-mile radius to a position in the current certified class.

C. (Deleted 7/1/09)

Board Rule 7-19. If the employee accepts an offer outside the 75-mile radius, that employee can claim moving expenses as prescribed in fiscal rule. (10/1/07)

Reallocation

Board Rule 7-20. 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 laid off or given retention rights pursuant to the provisions of this chapter. If a certified employee is laid off or demoted due to an upward or downward allocation or layoff, the employee is placed on a departmental reemployment list. If an employee refuses a retention offer, the employee is laid off and placed on the departmental reemployment list. (10/1/07)

Appeals

Board Rule 7-21. All employees whose positions have been eliminated or who have been upwardly or downwardly allocated to a different class in the course of a layoff shall have a mandatory right to a hearing before the State Personnel Board. Acceptance of retention rights to another position does not eliminate the employee's appeal rights. (7/1/09)

Recordkeeping

Board Rule 7-22. Department heads must provide any required or requested information to the Director or Board in a timely manner. (10/1/07)

Chapter 8 Dispute Resolution

Authority for rules promulgated in this chapter is found in §§24-50-103, 104, 104.5, 123, 125, 125.3, 125.4, 125.5, 131, 24-50.5-101 to 107, 24-50-112.5, 24-4-105 and 106, 24-11-110, and 24-34-402, C.R.S. Board rules are identified by cites beginning with "Board Rule".

General Principles

Board Rule 8-1. Disputes should be resolved at the lowest level and as informally as possible. Fair and unbiased resolutions should be reached as quickly as possible. As such, parties are encouraged to use alternative dispute resolution methods, including those provided in this chapter, in an attempt to reach early solutions.

Board Rule 8-2. Appeals may be dismissed if the employee, applicant, or department does not keep the Board informed of the proper email address or mailing address, fails to appear for a hearing either personally or through counsel, or if the appeal does not meet the requirements of these rules. (12/1/09)

Board Rule 8-3. Any person may file a complaint concerning a state employee's action. If the complaining party is an employee in the same department, the grievance procedure adopted by the department, or if none, as provided in this chapter, is to be used. If the complaining person is outside the department or the state personnel system, the person shall file a written complaint with the employee's appointing authority within a reasonable time period. The appointing authority will review a complaint and take the appropriate action, if any.

Notice Of Appeal Rights—Corrective Or Disciplinary Actions

Board Rule 8-4. Affected persons shall be informed, in writing, of any rights to dispute a corrective action or an action that adversely impacts pay, status, tenure, or a performance rating and award. Such a notice must include the time limit to exercise such rights, the official and address to whom the dispute should be directed, the requirement that the dispute must be in writing, and the availability of any standard appeal form. If the dispute alleges discrimination, refer to the "Allegations of Discrimination" section of this chapter.

Board's Dispute Resolution Processes

<u>Grievance Procedures</u>

Board Rule 8-5. A permanent employee may grieve matters that are not subject to appeal or review by the Board or Director. Issues pertaining to leave sharing, discretionary pay differentials, granting or removal of in-range salary movements, or the performance pay system that do not result in corrective or disciplinary action are not subject to grievance or appeal. Use of the grievance process is not required prior to disciplining an employee based on sexual harassment.

Board Rule 8-6. Once a final written grievance decision is rendered by the highest level of relief in a department, an employee may petition the Board for discretionary review pursuant to the discretionary Board hearing section of this chapter.

Board Rule 8-7. If the complaining employee is no longer employed under the state personnel system, any grievance in process at the department level is considered concluded.

A. If the complaining employee is separated from employment and does not appeal that separation to the Board, any grievance in progress at the department or Board level is considered concluded.

B. If an employee is restored to a position following involuntary separation, by Board order, settlement or reemployment, any unrelated grievance pending at the time of separation shall be processed.

Grievance Process

Board Rule 8-8. The grievance process is designed to address and resolve problems, not to be an adversarial process.

A. Each department shall establish a process that complies with the following requirements.

1. All employees must be informed in writing how to initiate and proceed though the grievance process, including all deadlines.
2. An employee must initiate the grievance process within 10 days of the action or occurrence being grieved; or within 10 days after the employee has knowledge of, or reasonably should have knowledge of, the action or occurrence.
3. To initiate the grievance process, the employee shall notify the supervisor and/or second level supervisor, as provided in the department's grievance process. An informal discussion will be held to attempt to resolve the grievance. The employee shall be informed in writing of the decision within 7 days after the discussion. If a timely decision is not issued, the employee may proceed to the next stage of the process.
4. The decision reached at the informal stage shall be binding on the parties, unless the employee elects to proceed to the formal written process. The employee has 5 days after receipt of the informal decision to initiate the formal grievance process. The formal grievance must be in writing and submitted to the department's appointing authority. Only the issues set forth in the written grievance shall be considered thereafter.
5. The appointing authority will issue the final department response to the grievance. The appointing authority may appoint an objective person or panel to make recommendations, or may delegate the decision. If the grievance concerns the actions of the appointing authority the department may, but is not required to, provide a process by which a different individual issues the final department response.
6. The process is deemed completed upon issuance of a final department decision, which must be in writing and issued within 30 days of the initiation of the written grievance process. The final written grievance decision must notify the employee of the right to appeal the final decision, including the time frame for such an appeal, and the Board address and telephone and fax number for filing the appeal.
7. Any of the time frames 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.
8. The final decision is binding unless the employee pursues it to the Board.
9. If a final decision is not issued in a timely manner, the employee may pursue the grievance with the Board.

B. The employee has 10 days to file a petition for hearing with the Board after receipt of the final department decision, or after expiration of 30 days of initiation of the written grievance process or any extension period granted by the Board. The original written grievance and the department's final decision shall be attached to the petition for hearing. A copy must be provided to the person who made the department's final decision.

C. An employee may be represented by any person of the employee's choice at any step(s) of the grievance process. That person may participate and speak for the employee.

However, the employee is expected to participate in the discussion during the grievance process.

D. In the event a department fails to establish a grievance process, it is deemed to have waived the opportunity to establish a departmental grievance process and must apply the elements established above for resolving grievances.

Alternative Dispute Resolution (Informal problem-solving processes)

Mediation

Board Rule 8-9. At the option of either party, mediation may be used in an attempt to resolve disputes. If the mediation also involves a grievance, the other party must participate and time limits governing the grievance process are suspended pending the outcome or discontinuance of mediation. Parties participating shall have authority to settle disputes at the time of mediation.

Board Rule 8-10. An administrative law judge may require a mediation conference.

Board Rule 8-11. Mediation is private, confidential, and privileged. A trained, unbiased facilitator, who assists the parties in clarifying and understanding their different points of view, identifying common ground, generating and evaluating alternatives, and reaching a mutually acceptable resolution, conducts it. Mediator notes are confidential and must be destroyed after mediation. The mediator cannot be contacted for information or called as a witness in other later proceedings. Communication during mediation is not discoverable or admissible, except for information that is required to be reported under a specific law. The costs associated with the use of a mediator are to be borne equally by the parties, unless otherwise agreed to between the parties prior to the commencement of the mediation process. Departments shall notify participants to a grievance that mediation is an available form of alternate dispute resolution. Settlement communications with any of the Board's settlement facilitators, the State Employee Mediation Program and the State Ombuds Office are all considered confidential mediation communications covered by this Board Rule. (10/1/07)

Board Rule 8-12. Both parties shall review any agreement resulting from a mediation conference before signing it. If the department fails to comply with the terms of the agreement, a grievance may be filed. If the employee fails to comply with the terms of the agreement, such action may be subject to performance evaluation, corrective or disciplinary action.

Settlement

Board Rule 8-13. Subsequent to filing an appeal or petition for hearing under this chapter, any party may ask the Board staff to facilitate the settlement process and the Board will provide a facilitator, which may be an administrative law judge not assigned as the hearing judge for the matter. However, the parties must attempt to resolve an appeal before the hearing commences, which may include settlement or other form of alternative dispute resolution. If a party to an appeal makes such a request, the other party(ies) must appear at least once at a conference and attempt in good faith to settle the matter. If a party believes settlement is inappropriate, that party must file a motion stating the specific reasons why settlement is inappropriate. The administrative law judge assigned the case, upon good cause shown, may waive the requirement. An administrative law judge may require a settlement conference.

Board Rule 8-14. The settlement process is private, confidential, and privileged unless the information disclosed is required to be reported under specific law.

Board Rule 8-15. Only the parties and their representatives shall participate in settlement proceedings, which shall be closed to any other person.

Board Rule 8-16. All notes taken by the facilitator shall be kept in a separate file and are not accessible to the administrative law judge assigned the appeal. At the end of the case, the files shall be destroyed. There will be no communication regarding the substance of the settlement negotiations between the facilitator and the administrative law judge hearing the appeal.

Board Rule 8-17. The facilitator cannot be a witness in any proceeding on the subject matter. Communication between the parties at the settlement conference shall not be admissible at the hearing. However, this does not bar admission of evidence discovered by a party outside the settlement conference.

Board Rule 8-18. Any settlement agreement reached shall be reviewed by both parties prior to signature. Upon reaching a signed settlement agreement, the parties shall file a signed stipulated motion with the Board seeking dismissal of the case or action, and attach a signed copy of the settlement agreement. The Board's director or an administrative law judge will promptly enter an order pursuant to the stipulated motion.

Board Rule 8-19. If the employee or the department contends the other party has not complied with the terms of the settlement agreement, the employee or the department may petition the Board for a hearing. If the employee does not comply with the terms of the agreement, the action may be subject to the provisions in the "Performance" chapter.

A. If the employee is no longer employed by the department and either party contends the other has not complied with the terms of a settlement agreement, the employee or the department may seek review or enforcement of the Board's order entered pursuant to Board Rule 8-18 above, under the provisions of §24-4-106, C.R.S. (1/1/07)

<u>Arbitration</u>

Board Rule 8-20. Parties may enter into a stipulation for dismissal of the appeal and diversion to arbitration under the Uniform Arbitration Act. The stipulation must include both parties' knowing and voluntary waiver of all appeal rights under the state personnel system. The arbitrator's award cannot order any action that violates state personnel rules, provisions of constitution or law, or affect the rights of any individual who has not agreed to be a party in the proceeding.

Petition for Declaratory Orders

Board Rule 8-21. Any person may petition the Board for a declaratory order to clarify the applicability of statute, Board rule or order to the petitioner.

A. Any petition must include: petitioner's name and address; whether petitioner is a state personnel system employee; the related statute or Board rule or order; and a concise factual statement of the issues involved. The Board may deny any petition that does not contain all of this information.

B. In determining whether to issue a declaratory order, the Board may consider factors including, but not limited to, whether a declaratory order will terminate the uncertainty or controversy giving rise to the petition; whether the petitioner has another remedy or avenue for review of the controversy; whether there is another case or investigation pending before the Board, a court, or another department involving the controversy; and whether the issue is ripe for review.

C. The Board may grant the petition for declaratory order and order that the matter be set for hearing, order briefing on the issues presented in the petition, or deny or dismiss the petition. The Board will notify the petitioner of its decision.

D. Any action or order of the Board is subject to judicial review.

Investigation Of Retaliation For Disclosure Of Information (Whistleblower Claims)

Board Rule 8-22. An employee who seeks to have an allegation of retaliation for disclosure of information reviewed by the Board must file a complaint with the Board in accordance with §24-50.5-101, C.R.S., et seq. ("Whistleblower Act").

Board Rule 8-23. The Board will send a copy of the complaint to the department for an initial response. The response must be filed within 45 days after the date the complaint was filed with the Board. (1/1/07)

Board Rule 8-24. The Board will notify the employee of the notice requirements of the Governmental Immunity Act, §24-10-101, C.R.S., et seq.

Board Rule 8-25. Repealed. (1/1/07)

Board Rule 8-26. Repealed. (1/1/07)

Board Rule 8-27. If an appeal is also filed asserting a constitutional or statutory right to a hearing, and the appeal and complaint relate to the same or closely related facts, they may be consolidated for evidentiary hearing. Either party may request, or the administrative law judge may order, consolidation if it would be more efficient and would not unduly prejudice any party. The hearing shall be set to commence not later than ninety days after the receipt of the written response filed by the agency and may be continued once for thirty days only upon good cause shown and upon approval of the administrative law judge. (1/1/07)

Board Rule 8-28. If the employee does not have a constitutional or statutory right to a hearing, the case will be set for preliminary review pursuant to the discretionary Board hearing section of these rules. (1/1/07)

Board Rule 8-29. Repealed. (1/1/07)

Allegation Of Discrimination

Board Rule 8-30. Pursuant to §24-50-125.3, C.R.S., the Board has jurisdiction over claims of discrimination within the state personnel system. If an employee or applicant seeks to have an allegation of discrimination reviewed by the Board, that person must file a petition for hearing within 10 days of the action or receipt of any final written decision (including, but not limited to, grievance decisions, selection decisions, or performance pay system dispute resolution decisions). All such decisions must notify that employee or applicant of the right to appeal the final decision, including the time frame for such an appeal, and the Board's address and telephone and facsimile numbers for filing the appeal. Except for appeals, the Board will defer action to allow the parties a chance to resolve the issue. (1/1/07)

Board Rule 8-31. Upon receipt of an appeal or a petition for hearing on matters covered by §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.

A. If the allegation is against the CCRD, the Board shall appoint an independent third party to investigate and will inform CCRD.

B. If the applicant or employee wants CCRD to investigate the discrimination claim, the employee must file a discrimination charge with the CCRD within 15 days of receipt of the notice of referral. The employee must file a verification form with the Board no more than 10 days after filing the CCRD charge, with a copy to the respondent.

Board Rule 8-32. Any time an appointing authority becomes aware of an allegation of discrimination based on disability, the matter must be referred to the department's ADA coordinator for investigation, no later than 7 days from the date of the allegation. This includes grievances and meetings to consider adverse action against the employee. Any time limits are suspended pending the investigation.

Board Rule 8-33. For claims asserted pursuant to §24-34-402, C.R.S., an employee can waive the right to investigation and proceed to preliminary review or hearing any time prior to completion of the investigation. The date of written notice of waiver of investigation is the date of appeal to begin the 45-day hearing period. If no specific, written charge is filed with the CCRD within 15 days of receipt of the referral order from the Board, or if the employee fails to file a verification form with the Board, the employee is deemed to have waived investigation and the matter will proceed to preliminary review or hearing.

Board Rule 8-34. If the investigation is not completed within 270 days, absent granting a time extension, the Board will notify the parties and set the matter for preliminary review or hearing.

Board Rule 8-35. When the investigation is complete, a written opinion of probable cause or no probable cause will be prepared. The Board will mail the opinion to the parties along with notice of their rights.

Board Rule 8-36. If probable cause is found in the CCRD investigation, CCRD will attempt to conciliate. If conciliation succeeds, the results and any settlement agreement will be sent to the Board. The Board will notify the parties by mail. If attempts fail, CCRD will notify the Board in writing. The Board will notify the parties by mail, including informing them of the right to appeal within 10 days of the Board's notice. If a party appeals the probable cause finding, the issue of discrimination shall be set for hearing.

Board Rule 8-37. If no probable cause is found in the investigation, CCRD or the independent third-party investigator will send the opinion to the Board who will notify the parties in writing by mail. The employee or applicant may appeal within 10 days of receipt of the opinion. If the employee fails to file an appeal or petition, the discrimination claim is considered abandoned and dismissed, and the matter will proceed without consideration of the issue of discrimination.

Attorney Fees And Costs

Board Rule 8-38. Pursuant to §24-50-125.5, C.R.S., attorney fees and costs may be assessed against an applicant, employee or department, upon final resolution of a proceeding against a party as follows:

A. 1. If the personnel action from which the proceeding arose, or the appeal of such action is found to have been instituted frivolously; (A frivolous personnel action or appeal therefrom shall be defined as an action or defense in which it is found that no rational argument based on the evidence or the law is presented.)

2. If the personnel action from which the proceeding arose, or the appeal of such action is found to have been made in bad faith, was malicious, or was used as a means of harassment; (Such a personnel action or appeal therefrom shall be defined as an action or defense in which it is found that the personnel action was pursued to annoy or harass, was made to be abusive, was stubbornly litigious, or was disrespectful of the truth.)

3. If the personnel action from which the proceeding arose is found to have been groundless. (A groundless personnel action or appeal therefrom shall be defined as an action or defense in which it is found that despite having a valid legal theory, a party fails to offer or produce any competent evidence to support such an action or defense.)

B. 1. A party seeking an award of attorney fees and costs must provide notice to the Board and all parties, prior to final resolution of proceeding, of the intent to seek an award of attorney fees and costs.

2. If a party requests an award of attorney fees and costs, each party shall be given an opportunity to present evidence on the issue.

3. The party seeking an award of attorney fees and costs shall bear the burden of proof with regard to whether or not a personnel action or appeal therefrom is frivolous, in bad faith, malicious, harassing, or otherwise groundless.

Board Rule 8-39. Attorney fees may be assessed against an applicant, employee, department, or their respective counsel, for abuses of discovery procedures, prehearing procedures, or other proceedings before the Board or its administrative law judges as provided in the Colorado Rules of Civil Procedure.

A. Any party seeking attorney fees under this rule shall file and serve a written motion for such fees no later than the conclusion of a proceeding, or make an oral motion for such fees during the course of a proceeding.

B. Any response to a motion for attorney fees shall be filed within ten (10) days of the date of filing or making of the motion.

C. A person or party that may be affected by a motion for attorney fees may request a hearing. The administrative law judge may hold a hearing if it is determined, in his or her discretion, that a hearing would materially assist in ruling of the motion.

Board Appeal Process

Address

Board Rule 8-40. Appeals asserting claims or grounds within the Board's jurisdiction as authorized by Colorado Constitution, statute, or these rules must be submitted to the Board at:

Colorado State Personnel Board
Attn: Appeals Processing
633 17th Street, Suite 1320
Denver, CO 80202

Filing Deadlines

Board Rule 8-41. Any appeal is timely if it is received by the Board or postmarked within 10 days after receipt of the written notice of the action. Any appeal that is not timely will be denied except for the following.

A. If the 10th day falls on a weekend or legal state holiday (regular schedule), the time period will be extended to the next regular business day.

B. The Board may extend the period of time for good cause as long as the request for extension is received by the Board or postmarked within the 10-day appeal period. The Board shall add up to three days to the date of notice if it was not sent by certified mail, hand delivered, or filed by facsimile transmission; however, the 10-day period begins to run from the actual date of receipt.

Scope and Contents of Board Appeals

8-42. Claims (with no allegation of discrimination) based upon the selection and comparative analysis process, downward allocation of a position, disputes involving the performance pay system, matters involving the overall administration of the personnel system by a department, not

otherwise subject to an appeal to the Board, and matters involving overtime, FMLA, removal of a name from an eligibility list, or rejection of an application shall be filed with the Director pursuant to the provisions of these rules governing "Director's Dispute Resolution Processes" in this chapter. (1/2/13)

Board Rule 8-43. The appeal must be in writing and copies provided concurrently to the affected department. Use of the standard *"**Colorado State Personnel Board Consolidated Appeal/Dispute Form**"* found on the Board website is required. For good cause shown, the Board may waive this requirement provided the person filing the appeal ("complainant") sets forth such grounds at the time the appeal is submitted. The appeal must clearly state the following in sufficient detail. (1/1/07)

1. The name, address, and telephone number of the complainant and any representative.
2. The specific action being appealed and a copy of the written notice.
3. The date the complainant received the notice of action.
4. A short, specific statement giving the reason for the appeal.
5. Whether the complainant is a certified employee.
6. The specific remedy sought.

Failure to provide a copy to the affected department may be grounds for denial or dismissal of the appeal.

Board Rule 8-44. If the notice of appeal does not contain sufficient or appropriate grounds for filing an appeal, the Board may dismiss the appeal with prejudice. Employees are required to keep the Board informed of their current address and telephone number, and to attend any required meetings or hearings. If either party does not follow these procedures, the Board may take appropriate action, including dismissal with prejudice.

Board Rule 8-45. The determination of timeliness of any subsequent documents will be the date of receipt in the Board's office. Whenever a person or party files any documents with the Board, copies must be provided to the opposing party at the same time.

Discretionary Board Hearings

Board Rule 8-46. The Board may use its discretion to grant a hearing for actions that do not adversely affect a certified employee's current base pay, status, or tenure, and where the employee does not have a right to a hearing, appeal, or review by law or rule.

A. The Board may grant a hearing in matters such as a violation of federal or state constitutional rights, an adverse written decision from the highest level of a department's grievance process, a decision from the "Director's review process" involving the overall administration of the state personnel system (referred to later in this chapter), unlawful discrimination where there is no mandatory right to a hearing, including discrimination in the selection and comparative analysis process, and reversion of a trial service employee for unsatisfactory performance. (1/2/13)

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

Board Rule 8-46.1 After the State Personnel Director's final decision pursuant to §24-50-112.5(4), C.R.S., any applicant directly affected by the comparative analysis process may file a written petition for discretionary review of the appointing authority's decision with the Board. Such petition shall be filed within 10 days after the State Personnel Director's final decision has been received by the applicant. The Board may only grant the petition 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 rules or procedures relating to the comparative analysis process. (1/2/13)

Board Rule 8-47. The written petition for hearing must be filed within 10 calendar days after a complainant receives written notice of the action on which the petition is based, and must include a copy of the action. In the case of an opinion of no probable cause to credit allegations of discrimination or reasonable basis to find a violation of the State Employee Protection Act (whistleblower), the written opinion is the notice of the action. Contents of the petition must be the same as those required in an appeal as listed in the scope and contents of Board appeals section of this chapter.

A. Failure to provide a copy of the petition to the respondent at the same time it is filed with the Board may be grounds to deny the petition for a hearing.

Board Rule 8-48. Within 15 days of the receipt of notice of the filing of a petition for hearing, the parties shall provide to each other copies of all documents or information relied upon by that party in reaching, in the complainant's case, the decision to grieve the respondent's action(s) and to appeal the respondent's final agency decision, and, in the respondent's case, the final agency decision that constitutes the subject of the petition for hearing. If either party asserts a privilege regarding such documents or information, it shall specify the nature of the privilege and provide the other party a privilege log that describes each document by title, author, date, subject matter, and legal basis for preserving the privileged or confidential nature of the documents or information withheld. (10/1/07)

Board Rule 8-49. The action that is the subject of the petition for hearing will not be reversed or modified unless it is found to be arbitrary, capricious, contrary to rule or law, or in violation of the grounds set forth in section §24-50-123, C.R.S.

Board Rule 8-50. Each party is required to file an information sheet containing the following specifically and clearly stated information:

A. Complainant

1. the facts complainant is prepared to prove, if a hearing is granted, that the respondent's actions were arbitrary, capricious, or contrary to rule or law;
2. any legal argument or authority complainant relies upon to support his or her claims;
3. the names, addresses, and telephone numbers of all witnesses, and a brief description of the testimony of each such witness that would substantiate complainant's allegations and claims;
4. a list of exhibits that would substantiate complainant's allegations and claims, with copies of such exhibits attached to the information sheet; and
5. a description of the remedy or relief sought by complainant.

B. Respondent

1. the response to the allegations and claims of complainant, including all facts respondent intends to prove if a hearing is granted that respondent's actions were not arbitrary, capricious, or contrary to rule or law;
2. any legal arguments or authority relied on by respondent;
3. the names, addresses, and telephone numbers of all witnesses, and a brief description of testimony of each such witness that would substantiate respondent's allegation and claims;
4. a list of exhibits that would substantiate respondent's allegations and claims, with copies of such exhibits attached to the information sheet; and

5. the respondent's response to the remedy or relief sought by complainant.

C. Unless an investigation has been referred and is pending as provided in the allegation of discrimination section of this chapter, complainant shall file his or her information sheet with the Board and serve a copy on the respondent within 25 days of receipt of the petition for hearing by the Board. The respondent shall file its information sheet with the Board no more than ten days after the complainant has filed his or her information sheet with the Board. The complainant may file a reply to the respondent's information sheet within five days. Three days shall not be added for pleadings sent by mail. The Board may grant one extension of time to each party for the filing of information sheets. Such extension shall be for no more than five (5) days, and granted only upon good cause shown. (8/14/10)

D. In the event an investigation has been referred and is pending pursuant to the allegation of discrimination section of this chapter, the time periods to file information sheets as provided in this rule shall not commence until the final written report or opinion resulting from such investigation is served upon the parties by the Board. (1/1/07)

E. The parties shall be required to file their respective information sheets with the Board electronically either on disk or CD-ROM, and to also submit a paper copy of the information sheet, with attached exhibits. The Board, for good cause, may waive the requirement of an electronically-filed information sheet if the party, no later than five days prior to the time the information sheet is due, makes a written request to the Board with detailed grounds to support the request.

F. If complainant fails to file a conforming information sheet, the petition for hearing may be considered abandoned and dismissed. If the respondent fails to file an information sheet, the preliminary recommendation will be based solely upon the information submitted by complainant.

G. The Board's director or administrative law judge will review the information presented by the parties in their information sheets to determine whether valid issues exist which merit a hearing. Complainant has the burden of demonstrating the existence of valid issues which merit a hearing by showing that there is an evidentiary and legal basis that would support a finding that the action was arbitrary, capricious, or contrary to rule or law, and that the relief requested by complainant is within the Board's statutory authority.

H. An administrative law judge or the Board's director will make a written preliminary recommendation to the Board, with copies provided to both parties, as to whether a hearing should be granted or denied.

I. At any stage in the preliminary review process, the Board's director or administrative law judge may request the parties to participate in a mediation conference with a trained mediator.

Board Rule 8-51. The Board will consider the preliminary recommendation and render its decision to grant or deny a hearing pursuant to §24-50-123(3), C.R.S.

A. The Board will not consider any document or other information submitted by either party after issuance of the preliminary recommendation. If the Board denies the petition for hearing, its determination shall not be subject to reconsideration.

B. If the Board grants a hearing, the date of the order will be treated as the date the appeal was submitted for purposes of determining the deadline for commencing a hearing. If the hearing is denied, the date of the order shall be used for purposes of any further appeal.

Board Rule 8-52. If an employee files a petition for hearing and an appeal asserting a constitutional or statutory right to a hearing and the mandatory and discretionary appeals relate to the same or closely related matters, the administrative law judge or Board's director may consolidate the cases if it is determined that consolidation would be more efficient and would not unduly prejudice any party.

Board Appeals

Board Rule 8-53. Any action that adversely affects a certified employee's current base pay, status, or tenure as defined by Board rule may be appealed and will be set for hearing. An adverse effect results in a reduction of current base pay or loss of other rights to which an employee is entitled by law, including denial of reemployment rights or removal from a reemployment list, probable cause opinion in discrimination cases or appeals of investigative reports finding reasonable basis for retaliation for disclosure of information.. Issues involving annual total compensation survey, discretionary pay differentials, the granting of in-range salary movements, leave sharing, personal services contracts and job evaluation system and actions are not subject to appeal. (1/2/13)

A. Disciplinary actions are subject to appeal and will be set for hearing, except discipline of probationary employees for unsatisfactory performance, reversion of trial service employees for unsatisfactory performance, and demotion of conditional employees to the class in which last certified. An employee who resigns in lieu of disciplinary action forfeits appeal rights. (1/1/07)

Practice Before The Board And Preparation For Board Hearings

Board Rule 8-54. The Colorado Rules of Civil Procedure and Evidence apply to proceedings before the Board as follows:

A. To the extent practicable, unless inconsistent with these rules, the Colorado Rules of Civil Procedure (C.R.C.P.) apply to matters before the Board. Unless the context otherwise requires, whenever the word "court" appears in the C.R.C.P., that word shall be construed to mean the Board or an administrative law judge for the Board.

B. To the extent practicable, the Colorado Rules of Evidence (C.R.E.) applicable to civil cases apply to all hearings before the Board or its administrative law judges. Unless the context otherwise requires, whenever the word "court," "judge," or "jury" appear in the C.R.E., such word shall be construed to mean the Board or an administrative law judge for the Board. An administrative law judge for the Board has the discretion to admit evidence not admissible under C.R.E, as permitted by law.

<u>Representation</u>

Board Rule 8-55. An individual may appear before the Board on his or her own behalf, or by an attorney authorized to engage in the practice of law in Colorado. Nothing shall preclude an out-of-state attorney from being admitted to practice before the Board in accordance with C.R.C.P. 221.1.

A. An attorney representing a party before the Board shall file an entry of appearance or sign a pleading. The entry of appearance shall contain the attorney's name, address, telephone and facsimile transmission numbers, attorney registration number, and the identity of the party for whom the appearance is made.

B. An attorney may withdraw from a case before the Board only upon order of the administrative law judge. Such approval shall be within the sound discretion of the

administrative law judge, and shall not be granted until the attorney seeking to withdraw has made reasonable efforts to give actual notice to the client:

1. that the attorney wishes to withdraw;
2. that the Board retains jurisdiction over the case;
3. that the client has the burden of keeping the Board informed where notices, pleadings, and other papers may be served;
4. that the client has the obligation to prepare for hearing or hire other counsel to prepare for hearing;
5. that if the client fails or refuses to meet these burdens, the client may suffer an adverse determination at hearing;
6. of the dates of any proceeding, including hearing, and that holding of such proceedings will not be affected by the withdrawal of counsel;
7. that service of pleadings and papers in the case may be made upon the client at his or her last known address within 10 days of the notice.

The above notice must be in writing and filed with the Board along with a statement showing the manner in which the notice was given to the client, and setting forth the client's last known address and telephone number.

C. The client and opposing attorney shall have 10 days from the date of the notice to object to a withdrawal. After the withdrawal is approved by the Board's director or administrative law judge, the attorney shall notify the client of the effective date of such withdrawal, and all pleadings, notices or other papers may be served on the party directly by mail at the last known address of the party until new counsel enters an appearance.

Board Rule 8-56. The filing and service of pleadings and other papers, including facsimile filings shall be governed by the following.

A. The original of an appeal, petition, pleading, or other papers shall be filed with the Board. After the Board has assigned a case number to a matter, all pleadings and other papers filed with the Board shall contain the assigned case number.

B. The facsimile capabilities of the Board are limited. Parties are encouraged to avoid filing pleadings or other papers with the Board by facsimile copy, except when reasonably required by time constraints. Facsimile copies may be filed with the Board in lieu of the original document, provided, however, that if a complete facsimile copy fails to conform to Board rules, it will not be accepted for filing. The party or attorney filing the facsimile copy shall keep the original document for production to the Board, if requested.

C. Documents in excess of six pages, excluding the caption or cover sheet, may not be filed in lieu of the original unless otherwise ordered by the Board's director or an administrative law judge.

D. Any facsimile copy filed or transmitted directly to the Board shall be accompanied by a caption/cover sheet that contains:

1. the title of the document being transmitted and identifying it as a facsimile copy;
2. the case number;
3. the number of pages;
4. identity of the transmitter; and
5. telephone number of the transmitter, along with any instructions.

E. All facsimile copies filed in lieu of the original document must be filed during normal business hours of the Board between 8:00 a.m. and 5:00 p.m., Monday through Friday,

excluding state holidays. In the event a facsimile copy is received outside of normal business hours, it will be considered to have been filed on the next business day.

F. Service of pleadings or other papers on a party or on an attorney representing a party may be made by hand delivery, facsimile transmission to the facsimile number provided by the party or attorney, by mail to the address contained in the pleadings, or to the party's last known address. When an attorney represents a party, service shall be made on the attorney.

Board Rule 8-57. The filing of motions shall be governed by the following.

A. Prior to the filing of a motion, the party or counsel filing a motion should confer with the opposing party or counsel. The motion shall, at the beginning, contain a certification that the party filing the motion in good faith has conferred with the opposing party or counsel about the motion. If no conference has occurred, the reason why shall be stated. If the relief sought in the motion has been agreed to by the parties or will not be opposed, the motion shall so state.

B. Except for motions made during hearing or where the administrative law judge deems an oral motion appropriate, motions should be filed as early as possible prior to hearing, and in no event later than 10 days prior to hearing. Substantive motions shall be supported by a recitation of legal authority either incorporated in the motion or set forth in a separate brief. The responding party shall have 10 days from the date of the motion to file a response. If there are less than 10 days before the hearing, the responding party may provide a written or oral response at the hearing. No reply from the moving party shall be permitted unless ordered by the administrative law judge. Motions and briefs in excess of 10 pages in length are discouraged.

C. Motions shall be determined promptly upon the written motion and briefs filed. However, the administrative law judge may order expedited responses, oral argument or an evidentiary hearing on the administrative law judge's own motion or, at the discretion of the administrative law judge on request of a party. The party filing a motion requiring immediate disposition shall call it to the attention of the administrative law judge or Board's director.

D. A motion shall be deemed a confession upon failure of a party to file a response. If any party fails to appear at oral argument or hearing, without a prior showing of good cause for non-appearance, the administrative law judge or Board's director may proceed to hear and rule on the motion.

E. Motions for extensions of time or continuance of hearings shall be determined in accordance with this rule. A hearing may only be continued once and only for good cause; motions for extensions of time shall also be granted only for good cause. Stipulations for extensions of time or continuances shall not be effective unless and until approved by an administrative law judge or Board's director.

Prehearing Procedures

<u>Discovery</u>

Board Rule 8-58. Discovery in proceedings before the Board shall be governed by the following.

A. To the extent practicable, C.R.C.P. 26 through 37 apply to proceedings before the Board and its administrative law judges, except to the extent they provide for or relate to disclosures, numerical limitations on discovery requests, or the time discovery can be initiated.

B. Preparation for hearing may be done through informal information requests or the formal discovery procedures. No specific order by an administrative law judge is needed for a party to conduct discovery. Without an order, the following applies to preparation for all hearings; however, upon the filing of a proper motion and a showing of good cause, an administrative law judge may modify or waive the following provisions in a specific case.

1. Within 15 days of the receipt of a notice of appeal or the grant of a hearing, the parties, without awaiting a discovery request, are to disclose to each other a listing, together with a copy of all documents, information, data compilations and tangible things in the possession, custody, or control of the party that are relevant to the facts, claims and defenses in the appeal before the Board. Each party shall also make available for inspection and copying the documents or other evidentiary materials not privileged or protected from disclosure. If a party claims a privilege relative to any document or evidentiary materials, that party shall provide the other parties a privilege log describing the title, author, date, and subject matter of the document or material, along with the legal basis for preserving the privileged or confidential nature of the document or materials withheld.
2. All requests for information, either informal or formal, other than depositions, must be served no later than 15 days from the date of issuance of the notice of hearing. The deadlines are not extended if the hearing is continued unless the administrative law judge orders an extension.
3. Responses to all requests for information, either informal or formal, must be provided within 20 days after receipt of the request.
4. All exchanges of information, including depositions, must be completed at least 10 days prior to the hearing.
5. Each party is allowed to take three depositions. Each party is allowed to submit 30 Interrogatories consisting of one question each, 20 requests for Production of Documents consisting of one request each, and 20 Requests for Admissions consisting of one admission each.
6. A party must make a good faith effort to resolve any discovery disputes prior to filing a motion to compel discovery. Failure to make such an effort may result in the imposition of sanctions against the moving party. Any motion concerning discovery disputes must certify compliance with this rule.

Prehearing Statements

Board Rule 8-59. The parties shall file with the Board and serve on each other party, no less than 15 days prior to the commencement of a hearing, a prehearing statement setting forth the following:

A. Statement of claims and defenses (a plain, concise statement of all claims or defenses asserted by the party filing the prehearing statement. Complainants should include 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 remedy/relief requested);

B. Undisputed facts (a plain, concise statement of all facts which the party filing the prehearing statement contends are or should be undisputed);

C. Disputed issues of fact (a plain, concise statement of the facts which the party filing the prehearing statement claims are in dispute);

D. Pending motions (a listing of all outstanding motions that have not been ruled upon by the administrative law judge);

E. Points of law (a plain, concise statement of all points of law that are to be relied upon or that may be in controversy, citing pertinent statutes, regulations, rules, cases, and other authority);

F. Witnesses (the name, address and telephone number of any witness whom the party may call at hearing, together with a description of the content of such person's testimony);

G. Experts (the name, address, telephone number and a brief summary of 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. These requirements 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 description of any physical or documentary evidence to be offered at the hearing. Complainant's exhibits should be marked using letters, and respondent's exhibits marked using numbers. Exhibits should not be attached to the prehearing statement filed with the Board.) (6/1/06); and,

I. Stipulations (a listing of all stipulations of fact or law, or admissibility of exhibits reached between the parties, as well as any additional stipulations offered to facilitate disposition of the case).

Board Rule 8-60. Compliance with the prehearing procedures set forth in these rules is mandatory unless modified by order by the administrative law judge on his or her own motion, or motion by one of the parties. Such order may require the parties to participate in a prehearing conference before the administrative law judge.

Board Rule 8-61. The hearing must commence no later than 90 days after receipt of the appeal. All prehearing matters, including the filing of prehearing or amended prehearing statements and completion of discovery, must be concluded prior to commencement of the hearing.

A. The commencement will be in person, or if ordered by the administrative law judge prior to the commencement, upon good cause shown, may be by telephone or videoconference where appropriate. Presentation of an opening statement, factual stipulations, and stipulated exhibits will be sufficient to constitute the commencement of the hearing.

Board Rule 8-62. Both parties must attempt to resolve an appeal before the hearing. This may include settlement.

<u>Responsible/Lead Counsel</u>

Board Rule 8-63. If all parties are represented by counsel in proceedings before the Board, each counsel of record shall be jointly responsible for scheduling conferences and preparing and filing prehearing pleadings and documents as may be required. In the event a party is not represented and will be participating in the hearing, counsel for the represented party in the proceeding shall be responsible for coordinating with the unrepresented party for the purpose of scheduling conferences, obtaining hearing dates, and preparing and submitting prehearing pleadings and documents.

Subpoenas

Board Rule 8-64. Upon oral or written request of a party or counsel for a party no later than 10 days prior to a hearing or deposition, the Board's director or administrative law judge shall issue a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at such deposition or hearing.

A. The subpoena or subpoena duces tecum shall be served on the witness to whom it is directed in the same manner as subpoenas served in proceeding in the district courts for the State of Colorado pursuant to C.R.C.P. 45. In addition, the subpoena or subpoena duces tecum must be served at least 48 hours prior to the commencement of the deposition or hearing.

B. Except for witnesses subpoenaed on behalf of the State of Colorado, or an officer or department of the State of Colorado, witnesses subpoenaed pursuant to this rule shall be paid the same fees for attendance and mileage as are paid to witnesses in the district courts of the State of Colorado. The party requesting that the subpoena be issued shall pay such fees to the witness at the time the subpoena is served as required by this rule.

C. Upon the failure of a party or counsel to comply with the requirements of either subparagraphs A or B of this rule, the party or witness subject to the subpoena may petition the Board's director or the administrative law judge for an order quashing such subpoena. The Board's director or the administrative law judge, in his or her discretion, may also award attorney fees for such non-compliance pursuant to Board Rule 8-39. (1/1/07)

D. Upon failure or refusal of any witness to comply with a subpoena issued and served upon them under this rule, the Board's director or administrative law judge may petition the district court for the City and County of Denver for an order citing such witness in contempt for such failure or refusal. The procedure for such contempt proceedings shall be governed pursuant to §24-4-105(5), C.R.S.

Post-Hearings Proceedings

Board Rule 8-65. A petition for reconsideration of the initial decision may be filed by an original party within five days of receipt of the initial decision. The administrative law judge may reconsider an initial decision without the petition within 10 days of issuance. Petitions shall be limited to matters alleged to be overlooked or misunderstood by the administrative law judge and cannot contain other arguments. Oral arguments shall not be permitted on any petition. A determination on the petition is typically issued but if no order is issued, the petition is considered denied. Filing a petition does not extend the time for filing an appeal of the initial decision.

Board Rule 8-66. Tape recordings of a hearing shall be erased 60 days after expiration of all rights resulting from that hearing.

Board Review Of Initial Decisions and Dismissal Orders

Board Rule 8-67. Appeals of dismissal orders and initial decisions of the administrative law judge are made in accordance with statute. Appeals should be filed with the Board and a copy served on the opposing party, within 30 days of mailing of the order or decision. Any party who seeks review of all or part of the dismissal order or initial decision must file an appeal within 30 days, with no extensions for cross-appeals. Timely filing is determined by the date the Board actually receives the appeal. Failure to serve a copy on the opposing party may result in dismissal. The Board is required by statute to certify the record within 60 days after the date the record is designated. The Board will review and render a written decision within 90 days of the date the record is certified.

Board Rule 8-68. Any party who seeks to reverse or modify the initial decision must file with the Board a designation of record within 20 days following the date of issuance of the initial decision. A copy of this designation shall be served on all parties. Within 10 days, any other party or the Board may also file a designation of additional parts of the transcript of the proceedings which is to be included. Any appeal of the initial decision must be filed within 30 days of the date of the decision. Any appealing party shall submit appropriate payment for preparation of the record at the time the appeal is filed.

Board Rule 8-69. Any party who designates a transcript as part of the record is responsible for obtaining and paying a certified court reporter who shall prepare the transcript and file it with the Board no more than 59 days after the designation of record. Failure to designate a transcript is deemed a waiver of a request to prepare the transcript. If no transcript has been filed within the time limit, the record will be certified and the transcript will not be included in the record or considered on appeal. In absence of a transcript, the Board is bound by the findings of fact of the administrative law judge.

Board Rule 8-70. The appeal of the initial decision shall describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that are alleged to be improper, and the remedy being sought.

Board Rule 8-71. Upon certification of the record of administrative proceedings, the parties shall be notified in writing of the date the Board will consider the appeal. The Board is required by statute to decide the appeal no more than 90 days after the certification of the record.

Board Rule 8-72. Absent specific orders to the contrary, the appellant shall serve and file the brief within 20 days after the Board certifies the record. The opposing party's brief shall be filed within 10 days after receipt of the appellant's brief. The appellant may file a reply brief within five days. Three days shall not be added for pleadings sent by mail.

A. The final brief must be filed no later than 12 days before the Board meeting where the appeal will be considered. No extensions of time will be granted unless they allow both parties to file briefs within that time limit.

B. In cases where both parties have filed an appeal, they will be ordered to file simultaneous briefs as described above unless the parties file a stipulated amended briefing schedule.

Board Rule 8-73. All briefs must be typewritten and the text double-spaced, using only 8 ½ x 11-inch paper. Except by permission of the Board's director, briefs shall not exceed 10 pages, exclusive of pages containing the table of contents, tables of citations, and any addendum containing statutes, rules, regulations, and the like. An original and nine copies must be filed with the Board and a copy must also be served on the opposition. (6/1/06)

Board Rule 8-74. For any appeal to the Board, an original and nine copies of any motion (except extension of time) must be filed. For extensions of time or motions to dismiss based upon settlement of the appeal, the original and one copy must be filed with the Board. The Board director may grant motions for extension of time or motions to dismiss based upon settlement. A copy of any motion must be served on the opposition. (6/1/06)

Board Rule 8-75. In general, no oral argument will be heard and parties need not be present before the Board. Oral arguments may be allowed at the discretion of the Board. A request for oral argument shall be filed no later than the date the requesting party's brief is due. If granted, oral argument shall not exceed 15 minutes for each party. A request for additional time may be made by motion within 10 days after the briefs are closed but granted only for good cause. If oral argument is granted, parties are given reasonable notice of the time and place. The Board may terminate the argument whenever, in its judgment, further argument is unnecessary.

Board Rule 8-76. Any party appealing a final Board order shall serve a copy of the notice of appeal on the Board at the time of filing the notice.

Security

Board Rule 8-77. Security during Board meetings and Board hearings may be obtained by any party at that party's expense. Board staff will assist the parties in obtaining security when possible.

Director's Dispute Resolution Processes

General

8-78. Disputes asserting claims or grounds within the Director's jurisdiction as authorized by Colorado Constitution, statute, or these rules must be submitted to the Director at: (5/1/10)

Colorado State Personnel Board
Attn: Appeals Processing
633 17TH Street, Suite 1320
Denver, CO 80202

8-79. Disputes must be in writing and copies provided concurrently to the affected department. Use of the standard "***Colorado State Personnel System Consolidated Appeal/Dispute Form***" found on the Director's web site is required. For good cause shown, the Director may waive this requirement provided the person filing the appeal ("complainant") sets forth such grounds at the time the appeal is submitted. The dispute must clearly state the following in sufficient detail. (7/1/07)

1. The name, address, and telephone number of complainant and any representative.
2. The specific action being disputed and a copy of the written notice.
3. The date complainant received the notice of action.
4. A short, specific statement giving the reason for the dispute.
5. Whether complainant is a certified employee.
6. The specific remedy sought.

8-80. Copies of the written dispute must be provided concurrently to the affected department. Failure to do so may result in denial or dismissal of the dispute.

Director's Appeals

8-81. An applicant or employee who is directly affected may appeal to the Director for the following.

A. An allocation of an individual position to a lower pay grade. The written appeal must be filed within 10 days of receipt of notice. (1/2/13)

B. Objection to the comparative analysis process. A written appeal must be filed no later than 10 days from receipt of notice or knowledge of the action. (1/2/13)

1. Conduct refers to all activities, processes, or functions that are completed from the time the qualified applicant pool is identified to the creation of the ranked eligible list.
2. Content refers to the subject matter of the examination. Scores and ranks are outcomes of a process and are not considered as conduct or content of an examination.

The appeal is timely filed if it is received by 5:00 p.m. or postmarked by the 10th day. It may be filed by mail, hand delivery or facsimile to the Director.

8-89. Confidentiality of Examination Materials. Examination data and documents will be filed in a sealed envelope with the Director only. Such documents include, but are not limited to: test questions, scoring keys and scores or results. A list of documents sent under sealed envelope will be given to all appellants.

A. Use or disclosure of the information outside the appeal review process is strictly prohibited. Confidentiality of material in sealed envelopes shall be maintained throughout all phases of the review process, including preparation of any record for judicial review. The confidential material will be returned to the Director after the completion of a panel review. The Director will return the contents to the responding party if no request for judicial review is filed.

8-90. Oral Argument. No party is entitled to oral argument; it is discretionary with the Director or advisor(s). Either party may request oral argument in writing, on or before the date on which the position statement is due. A request must be granted before oral argument is permitted. The Director or advisor(s) may request oral argument on any issue raised regardless of whether any party has requested it.

A. The Director or advisor(s) will notify all parties of the date, time, and place. No continuances will be granted. All parties may speak. Each party is allowed 15 minutes. The appellant speaks first, followed by the opposing side. No witnesses or new written material will be allowed. Questions asked by the Director or advisor(s) are outside the 15 minutes allotted to a party.

B. Oral argument will be tape recorded unless all parties agree in writing to waive the recording. The tape recording will be destroyed 90 days after the decision is issued if no notice of judicial review is received.

8-91. The Director shall issue a written decision no later than 90 days after receipt of the appeal. The action may be overturned only if found to have been arbitrary, capricious, or contrary to rule or law. Failure to issue a decision within the time limit will cause the initial decision to be upheld. The matter appealed must be resolved within the 90 days, after which the Director loses jurisdiction and does not have the authority to extend the time period.

8-92. Decisions of the Director are subject to judicial review in accordance with statute.

8-93. An appellant may withdraw an appeal at any time prior to the final decision. If the remedy is granted during the course of the appeal, the appeal will be considered moot and dismissed with prejudice.

Performance Management Disputes

8-94. The performance management dispute resolution process is an open, impartial process that is not a grievance or appeal. No party has an absolute right to legal representation, but may have an advisor present. The parties are expected to represent and speak for themselves. (7/1/07)

8-95. Only the following matters are disputable:

A. the individual performance plan, including lack of a plan during the planning cycle;

B. the individual final overall performance evaluation, including lack of a final overall evaluation; and, (8/1/08)

C. the application of a department's performance management program to the individual employee's plan and/or final overall evaluation. (8/1/08)

8-96. The following matters are not disputable:

A. the content of a department's performance management program; (7/1/07)

B. matters related to the funds appropriated; and, (8/1/08)

C. the performance evaluations and merit pay of other employees. (9/1/12)

8-97. Every effort shall be made by the parties to resolve the issue at the lowest possible level in a timely manner. Informal resolution before initiating the dispute resolution process is strongly encouraged.

8-98. Dispute Resolution Process. Only the issue(s) as originally presented in writing shall be considered throughout the dispute resolution process.

A. Internal Stage. The first stage is the department internal dispute resolution process. Each department shall continually 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 must be communicated to all employees and must include the following elements.

1. The time limits and the process for filing a written request for review of the issue(s) throughout the dispute resolution process.
2. Who will decide the issue(s). The appointing authority is the decision maker unless it is delegated in writing and publicized in advance. Employees must be notified of the authorized decision maker for their disputes.
3. The time limits for issuing the final written department decision.
4. Any other specific requirements established by the Director.

A department's decision on issues involving an individual performance plan or evaluation concludes at the internal stage and no further recourse is available. For issues disputable at the external stage, the employee shall be given written notice, including deadlines and address for filing and the requirement to include a copy of the original written dispute and the department's final decision.

B. External Stage. This stage is administered by the Director. Only those original issues involving the application of the department's performance management program to the individual performance plan or evaluation. (7/1/07)

1. Within five working days from the date of the department's final decision, an employee may file a written request for review with the Director at the address specified in the Director's dispute resolution processes section of this chapter.
2. The request for external review shall include a copy of the original issue(s) submitted in writing and the department's final decision.

a. The Director or designee shall retain jurisdiction but may select a qualified neutral third party to review the matter. The Director or designee shall issue a written decision that is final and binding within 30 days.

C. In the event that an employee with a pending dispute separates from the state personnel system, the dispute is dismissed. (8/1/08)

8-99. The scope of authority of those individuals making final decisions throughout the dispute resolution process is limited to reviewing the facts surrounding the current action, within the limits of the department's performance management program. These individuals 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 at the external stage. Further, these individuals shall not render a decision that would alter a department's performance management program. (7/1/07)

A. In reaching a final decision, these individuals have the authority to instruct a rater(s) 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. These individuals may also suggest other appropriate processes such as mediation.

8-100. Retaliation against any person involved in the dispute resolution process is prohibited.

Director's Review Process

8-101. An applicant or employee may attempt to informally resolve a disagreement for matters that are not otherwise covered in this chapter by contacting the department within 5 days of receipt of the notice or knowledge of the action, e.g., removal of name from an eligible list, rejection of an application, violation of FLSA or FMLA.

8-102. A request for review may be filed with the Director within 10 days after receipt of notice or knowledge of the action. It must be in writing to the Director and include the following: job title, department involved, name of the department representative spoken to during informal resolution attempts, the date of the conversation, the specific issue, and the reason it is believed the decision is arbitrary, capricious, or contrary to rule or law.

A. A request may also be filed for a Director's review of a general matter that affects the overall administration of the state personnel system that is not otherwise covered by this chapter (except annual compensation survey, the granting of in-range salary movements, discretionary pay differentials, leave sharing, granting and application of discretionary saved pay during exercise of retention rights, and job evaluation system and actions). A Director's decision in this type of review is subject only to a discretionary Board hearing. (2/1/07)

8-103. The Director will select an investigator to review the matter.

8-104. The investigator's written report of findings or Director's decision will be issued within 90 days from receipt of the written request. The decision may be overturned only if found to be arbitrary, capricious, or contrary to rule or law. Both parties will receive a copy of the decision. If a decision is not issued within the time period, the initial decision is upheld.

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: cease and desist orders; hiring, reinstatement, or upgrading of employees, with or without back pay and compensation; referral of applicants for employment; admission or continuation of enrollment in on-the-job training; posting of notices and issuing orders as to the manner of compliance and corrective and/or disciplinary actions, as required; and, altering terms and conditions of employment as appropriate. This does not prohibit settlement by the parties at any stage of the proceedings.

9-7. If the Director finds the comparative analysis is a contributing factor to discrimination or unequal opportunity for all applicants, the Director can set it aside, require its redesign, void an eligible list or take other appropriate action. (1/2/13)

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 must 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 must 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 capitol 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 must 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 months and subsequently be retained as a contract worker by a different department. (1/2/13)

F. The department head must 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 must 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.

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 must 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. Reports on any aspect of the personal services review program shall be provided to the Director in the format and timeframe prescribed.

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 veterans 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 5 percent.

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.

Chapter – 11 – State Benefit Plans

Authority for rules promulgated in this chapter is found in §§24-50-104, 109.5, and Part 6, C.R.S. Board rules are identified by cites beginning with "Board Rule".

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 this chapter apply to all departments administering and all employees eligible for state benefit plans. (7/1/10)

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) is the date of hire or a qualified event.

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. Maintain records of all supporting documentation pertaining to the state group benefit plans to demonstrate compliance with law, rules, and written directives.

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. (7/1/10)

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 and accompanied by supporting documentation during open enrollment or within 31 days of a qualified event during the year (starting with the date of the event).
2. Failure to enroll or modify enrollment on or before the 31st day of the qualifying event (starting with the date of the event) requires the employee to wait until the next open enrollment or when the employee or dependents no longer meet eligibility requirements.
3. Enroll and verify elections annually.
4. Employees who transfer from one department to another must 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 must verify the accuracy of their payroll deductions and notify their department benefits administrator of any error. The notice must be in writing and within 10 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 10-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 must 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)

11-12. Eligible dependents include only those listed below. Additional criteria and documentation requirements are contained in plan documents and written directives. Dependents may be federal tax dependents (qualified) or non-tax dependents (non-qualified). Non-qualified dependents' coverage is subject to taxable income regulations. (7/1/10)

A. An employee's spouse, common law spouse, or same gender domestic partner.

1. Same gender domestic partner means an adult, at least 18 years of age:
   a. with whom the employee has shared an exclusive, committed relationship with that same person for at least one year prior to enrollment with the intent for the relationship to last indefinitely; and
   b. who is not related to the employee by blood to a degree that would prohibit marriage; and
   c. neither the employee nor partner is married to another person.

B. An employee's, spouse's, or same gender domestic partner's unmarried children, including biological, legally adopted, step, legally placed in foster care or for adoption, or a minor child for whom the employee has a court order granting allocation of parental responsibility (legal custody) that specifies responsibility for health insurance. Each dependent child must be:

1. a tax-qualified dependent, as defined by law, through the end of the month in which the child turns 24;
2. a tax-qualified dependent any age with a permanent physical or mental disability; or

3. a non tax-qualified dependent under age 25 that either has the same legal residence as the employee or is financially dependent upon the employee.

C. Excluded are ex-spouses and same gender domestic ex-partners and their children, opposite gender domestic partners, parents, grandparents and grandchildren, siblings, aunts and uncles, nieces and nephews, cousins, and any other relatives or non-relatives in the household, unless qualified under A or B above.

11-13. An affidavit or court document is required as documentation to add any dependent. Legal spouse requires a marriage license or certificate; and biological child requires a birth certificate. Any other acceptable documentation will be in accordance with written directives. (7/1/10)

Coverage of Benefits

11-14. 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. (7/1/10)

11-15. All coverage is prospective from the date of entry into the official benefit administration system or date of the qualifying event, whichever is later, except for initial coverage for new employees and newborn children. (7/1/10)

11-16. Elections made during open enrollment are effective the first day of the new plan year. (7/1/10)

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 must 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. (7/1/10)

11-20. An enrolled employee who works or is on paid leave one 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., life and short-term disability) as long as the employee remains on the payroll, regardless of status. (7/1/10)

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 family/medical leave, 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.
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 must 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 of eligibility for state group benefit plans must 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 web site is required. (7/1/10)

Department Of Personnel and Administration
Division of Human Resources
1313 Sherman Street, First Floor
Denver, CO 80203

The Director will issue a final written decision within 90 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 six-session course of counseling in a 12-month period. At the discretion of the counselor, additional sessions may be authorized.