

# **TECHNICAL ASSISTANCE – CHAPTER 1 – ORGANIZATION, RESPONSIBILITIES AND ETHICS**

Prepared by the Division of Human Resources in the Department of Personnel & Administration in July 2003.

## **STATE PERSONNEL BOARD**

Five members serve on the State Personnel Board. Three members are appointed by the Governor and two are elected by employees in the state personnel system. Board members serve five-year terms and may be reappointed by the Governor or re-elected. In order to serve on the Board, an individual must be a qualified Colorado elector and may not be an employee or officer of the state or any state employee organization. The principle functions performed by the Board are rulemaking and adjudication of disputes.

### **Board Elections**

A notice of election of a Board member is published at least 30 days before the deadline for submitting nominating petitions. Candidates for nomination must submit a petition for nomination on the official form provided by the Board. The petition for nomination must be signed by not less than 100 certified state employees. In addition to the nominating petition, the candidate must also submit a signed statement, acknowledged by a notary public, stating that the candidate is qualified and will serve if elected.

Ballots are provided to all certified employees. Ballots are typically distributed with payroll but a different method of distributing ballots may occasionally be utilized. The ballot states the deadline for submission. Ballots are considered timely if they are postmarked or delivered to the Board by the deadline.

Ballots are counted within two weeks after the deadline for their submission. Nominees may have a person of their choice present at the ballot counting. After the count is completed, the Board staff director will certify the count to the Board and send a copy to each nominee. There is an automatic recount if an election is decided by less than one percent of all votes cast.

The elected candidate takes office the first day of the month following the certification of the election. When only one eligible candidate is nominated, that candidate is certified as a new Board member without the distribution of ballots.

Any person wishing to contest a Board election may write a letter to the Board's office setting forth the basis for the contest. The Board's staff director has discretion to cure any election defect. The letter regarding the contest of the election, together with any response, is forwarded to the Board at its next regularly scheduled meeting.

Additional information concerning election of Board members may be obtained by contacting the State Personnel Board.

## STATE PERSONNEL DIRECTOR

The director's administrative procedures specify that certain powers of the director are not delegated outside the Department of Personnel & Administration. Powers of the director that are not delegated beyond the Department include:

- authority to render decisions on administrative appeals, including job evaluation appeals, selection and examination process appeals, matters affecting the overall administration of the personnel system that are not otherwise grievable or appealable (except the annual total compensation survey, discretionary pay, leave sharing, personal services contracts, and job evaluation system and actions), director's reviews (e.g., violation of FMLA, FLSA, application rejection, or removal of a name from an eligible list), and matters reviewed at the external stage of the performance pay system dispute resolution process. This provision does not preclude the director from appointing a panel or other person to make recommendations to the director and/or draft the director's decision.
- authority to issue and revise written directives and guidelines (e.g., interpretive guidelines to the rules/procedures, technical assistance guidance) concerning the administration of the personnel system;

Note: While departments have discretion to establish their own internal policies based on business needs, such policies must comply with the rules and procedures as well as any written directives or guidelines that are issued by the director.

- authority to conduct off-site and on-site reviews of a decentralized agency's personnel operations and activities (e.g., HR audits);
- authority to maintain the state job evaluation plan;
- authority to conduct system maintenance studies that create, amend, or abolish a class and assign pay grades;
- authority to conduct the annual compensation survey;
- authority to approve all provisional and conditional appointments; and,
- any other authorities which, in the discretion of the director, should not be delegated.

## APPOINTING AUTHORITY

The Colorado Constitution defines the term appointing authority as:

- the head of a principal department as it relates to heads of divisions ranking next below the department head and for employees of the department head's office;
- the head of a division that is expressly defined by law with respect to all employees within that division;
- the head of a division created by the head of a principal department with approval of the Governor and in accordance with the Administrative Reorganization Act; and,
- the president of a college or university.

In accordance with State Personnel Board Rule R-1-5, each agency is required to establish a written document specifying the appointing authority for each individual employee in the areas of corrective and disciplinary actions and other actions with an adverse impact. A method for complying with this provision is for each department to develop and post a written organizational chart that is available to all employees. This chart should show the appointing authority for each individual position. It is suggested that the chart indicate position numbers, instead of names, for both employees and appointing authorities so that it does not have to be revised because of staffing changes. Agencies may also want to note the "back-up" appointing authorities on the chart to address situations where appointing authorities are on leave or unavailable for extended periods of time. Another approach for complying with the rule is to provide all employees with a memo showing the appointing authority for their respective positions.

Appointing authorities are responsible for orienting employees to the workplace. Suggested topics for orientation include:

- a discussion of appointing authority and the delegation concept;
- attendance and leave, including hours of work, breaks, calling in procedures for illness or tardiness, and the process for approval of annual leave;
- pay procedures, assignment of duties, reporting procedure for changes in job duties that may affect job;
- grievance and appeal procedures, including those on job evaluation, examinations, disciplinary and other adverse actions, as well as the performance pay system dispute resolution process;
- rights, privileges, and expectations of employees;

- responsibilities and obligations of appointing authorities (e.g. compliance with federal laws);
- information concerning training;
- reporting on-the-job injuries;
- any time sheet reporting requirements;
- rules governing outside employment and process for obtaining approval; and,
- Family and Medical Leave Act.

## **EMPLOYEE ACTIVITIES**

### **Outside Employment**

An appointing authority is responsible for approving or disapproving an employee's request for outside employment. This topic should be covered during employee orientation so that employees are aware of the requirement for appointing authority approval and know that failure to obtain this approval may result in corrective or disciplinary action. In determining whether a request for outside employment will be approved, an appointing authority considers whether the outside employment is compatible with the employee's state personnel system job and whether the outside employment could give rise to any appearance of a conflict of interest. It is typically intended that the employee's state job be the employee's principal employment. An employee may grieve an appointing authority's decision not to approve outside employment.

### **Political Activities**

Federal statutes (the Hatch Act) limit the political activities of individuals employed in state agencies that have programs financed in whole or in part by federal loans or grants. There is also a state statute and a Campaign Reform Act that sets parameters for election activities. Key provisions of the Hatch Act and the Campaign Reform Act are outlined below:

#### **Hatch Act**

Employees of departments utilizing federal funds may:

- be candidates for public office in non-partisan elections;
- register and vote as they choose;
- assist in voter registration drives;
- express opinions about candidates and issues;
- contribute money to political organizations;

- attend political fundraising functions;
- attend and be active at political rallies and meetings on the employee's own time;
- join and be active members of a political party or club;
- sign nominating petitions;
- campaign for or against referendum questions, constitutional amendments, municipal ordinances on the employee's own time;
- campaign for or against candidates in partisan elections on the employee's own time;
- make campaign speeches for candidates in partisan elections on the employee's own time;
- distribute campaign literature in partisan elections on the employee's own time; and
- hold office in political parties or clubs.

Employees of departments utilizing federal funds may not:

- use their official authority or influence to interfere with an election;
- collect political contributions unless both individuals are members of the same federal labor organization or employee organization and the one solicited is not a subordinate employee;
- knowingly solicit or discourage the political activity of any person who has business before the agency;
- engage in political activity while on duty;
- engage in political activity while in any government office;
- engage in political activity while wearing an official uniform;
- engage in political activity while using a government vehicle;
- solicit political contributions from the general public during work time; and,
- in some circumstances, be candidates for public office in partisan elections (e.g. gubernatorial, statewide elections).

### Campaign Reform Act

Colorado's Campaign Reform Act (CRA) sets the parameters for election activities. A distinction is made between activity as a citizen on one's own time and activity as an employee of an agency, department, board, or any other political subdivision. As long as an employee is acting as a citizen, no restraints are placed on campaign activities. A person may expend personal funds, make a contribution in kind and use personal time to urge electors to vote in favor of or against any issue before the electorate.

An employee "on the job", however, must be careful not to violate the CRA. While the agency or other political subdivision may pass a resolution or take a position either in favor of or against an issue, the agency or other political subdivision may not make any contributions or contributions in kind.

Contributions or contributions in kind include a donation of time by the employee. Any time spent on the job in envelope stuffing, preparing literature or contacting electors is prohibited by the CRA. In addition, any use of materials from the office is prohibited. The only exception is that a member or employee of the agency who has policy-making responsibility may expend no more than \$50 of public money in the form of letters, telephone calls, or other activities to respond to questions about an issue or to express an opinion.

If an employee does not have policy-making responsibilities, any time spent on the job responding to questions or giving partisan information about an issue is prohibited by law. However, an employee is able to direct an inquiry to an appropriate source of information or give fair and balanced information on any issue of official concern before the electorate.

Employees have a right not to perform tasks that violate the CRA and agencies must be careful not to ask or expect employees to engage in activities that constitute a CRA violation.

Specific questions about political activities should be directed to the agency's legal counsel.

## **RECORDS**

### **Open Records Law**

The Open Records Law provides that public records shall be open for inspection at reasonable times. It also provides that a records custodian may make reasonably necessary rules for the inspection of public records to protect the records and prevent unnecessary disruption to the duties of the custodian and the custodian's office. The following examples are provided to assist agencies in determining whether or not a custodian needs to promulgate formal rules for inspection of public records or whether decisions may be on a case-by-case basis.

- Example 1. John Smith asks to review 100 employment applications. It is not unreasonable to ask Mr. Smith to return the following day so that there is adequate time to assemble the records. Formal rules would not be required to address this situation.
- Requests for inspection of documents have become so numerous that they prevent the custodian from accomplishing other duties efficiently. The custodian feels that matters would be improved if a specified time during the week were set for all inspection requests. A rules hearing would be required in this situation because a general rule concerning inspection of public records is being promulgated.

Record custodians are responsible for developing procedures that ensure official records are secured and are accountable for the access to official records. The person designated as a records custodian must have a good working knowledge of the provisions of the Open Records Law. However, the duties of a records custodian do not include responsibility for explaining or interpreting information contained in the requested records.

A records custodian is responsible for analyzing the nature of the information requested and deciding whether the requested information should be disclosed under the Open Records Law or other applicable legislation. If an item is not otherwise covered in the Open Records Law or other applicable legislation, generally it must be disclosed. Questions concerning whether a document can or cannot be disclosed should be directed to the agency's legal counsel. It is important to note that a district court may order a records custodian personally to pay court costs and attorney fees if the court finds that a custodian's decision to deny inspection of a record was arbitrary or capricious.

A reasonable fee may be charged for copying documents. This charge may not exceed \$1.25 per page unless actual costs exceed this amount. The Open Records Law also allows a reasonable fee to be charged if an agency, in responding to a specific request, has manipulated data to produce a record in a different form than used by the state.

### **Personnel Files**

An employee must be given a copy of any records or documents that are placed in the employee's personnel file, except information obtained during the course of reference checks. Employees always have the right to examine their own personnel files.

Procedure P-1-5 lists documents that must be included in an employee's personnel file. Employee personnel files must be retained after an employee separates from state service. In addition, a records management manual is available from State Archives. Because an employee who has separated from service may have reinstatement privileges and because the length of time for reinstatement is unlimited, it is important to retain annual and sick leave balances, as well as letters of commendation and reference, in the personnel file.

Unless an employee has given written permission, or a court has issued a specific order, access to a complete personnel file should be denied to anyone except the employee, the employee's authorized representative, and supervisors in the chain of command. However, the following information is considered public record and should be disclosed to any person making a request.

- Performance ratings. There is currently ongoing discussion about whether the term "performance ratings" includes all documents resulting in the performance rating itself (performance plan, progress reviews, etc.) or whether the term is limited to only the overall rating. Please contact the agency's legal counsel for guidance concerning this issue.

- Applications. Tests data and scores, home addresses, telephone numbers, birth dates, and social security numbers are not open records and should be blocked out or expunged before the application is released.
- Compensation, including expense allowances and benefits. The term compensation includes items such as an employee's gross salary based on class and position in the range, the state's contribution to health, dental and life insurance in general terms (how much the state contributes for a single employee, an employee with one dependent or two dependents), the state's standard mileage and meal allowance reimbursement for travel, etc. Compensation does not include financial information concerning an individual employee's net pay. Information concerning garnishments, the specific amount an employee contributes to deferred compensation, insurance program deductions, net pay, or any other information specific to an individual employee should not be disclosed.
- Employment agreements and any amount paid or benefit provided incident to termination (e.g., settlement agreements, voluntary separation incentives).
- There is ongoing discussion about whether corrective and disciplinary actions are open records. Please contact the Employment Law section of the Attorney General's office for information concerning release of corrective and disciplinary actions.

### **Medical Information**

Medical information should be retained in a separate, secure file. Medical information includes leave forms containing such information.

It is a violation of the Americans with Disabilities Act (ADA) to request medical leave records for an individual who is being considered for employment. This applies to current employees who are being considered for transfer or promotion to a different agency or position. It may be possible to obtain leave records and other medical information following a conditional job offer if this is done for all employees. Questions concerning this subject should be directed to agency ADA coordinators, the Division of Human Resources of the Department of Personnel & Administration or the agency's legal counsel.

Access to information in a medical file is limited to the following individuals:

- supervisors and managers may be informed about necessary restrictions on the work or duties and necessary accommodations;
- first aid and safety personnel may be informed, where appropriate, of a condition that may require emergency treatment or if special procedures are needed in the case of an evacuation;
- government officials investigating compliance with the ADA and other laws should be provided relevant information;

- relevant information may be provided to state worker's compensation officers or related funds in accordance with state laws; and,
- relevant information may be provided to insurance companies when the company requires a medical examination to provide health or life insurance for employees.

The ADA does not preclude an agency from cross-referencing the separate, secured medical files to the personnel files for ease of reference.

A court may require that additional medical information or information from a personnel file be released. Agencies should consult their legal counsel when such requests are received.

### **Drug Testing Information**

It is recommended that information concerning drug testing, except forms signed by employees indicating awareness of policies concerning drug use and testing, be kept in a separate drug test or medical file. Although some of this information may not constitute medical records, it is better to err on the side of caution and keep the information separate and secured. Drug testing information should only be disclosed to the employee and to those individuals with a need to know. A person with a "need to know" is someone who requires the drug testing information in order to perform his/her job (e.g., a direct supervisor). A person with a "need to know" may also be someone who requires this information in order to facilitate treatment.

Every attempt is made to keep this technical assistance updated. For more detailed information, refer to Chapter 1 of the Personnel Board Rules and Director's Administrative Procedures or contact your agency human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and rules are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.