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") 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.

Unless otherwise noted, the rules and procedures were effective July 1, 2005. This version reflects rulemaking by the Director to amend Rules 2-11(A) and 4-24, effective May 1, 2006. This version also reflects rulemaking by the Board to change the citation to the Board Rules to eliminate confusion with Director's Procedures, and to amend Rules 8-25B, 8-59B(H), 8-73B, and 8-74B, effective June 1, 2006.

Preamble

Unless otherwise noted in a specific provision, the following 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. Such rules were effective July 1, 2005. Citation to the Board Rules was changed and adopted by the State Personnel Board on March 21, 2006, pursuant to a Statement of Basis and Purpose dated March 21, 2006. Cites to Personnel Board Rules begin with "Board Rule".

Unless otherwise noted in a specific provision, the following 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 procedures were effective July 1, 2005.

Chapter 1 Organization, Responsibilities, Ethics, And Definitions

Authority for rules promulgated in this chapter is found in §§24-50-101, 103, 116, 117, 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 eight copies of all materials to be considered by the Board, except as otherwise provided in these rules.

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 performance award within policies issued by the Director; 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.

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 performance pay 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.

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. Examination Records. Examination 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 examination records must include all related information up to the establishment of the eligible list.

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 pay system dispute resolution process by explaining the process, helping identify the issues, preparing documents, and attending meetings.

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.

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.

1-38. Competencies. Observable, measurable patterns of knowledge, skills and abilities, behaviors, and other characteristics that employees need to successfully perform work-related tasks.

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 1-41. 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.

Board Rule 1-43. Eligible List. A list of persons, in rank order, who have passed an examination and may be considered for appointment. Referrals are drawn from this list.

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.

Board Rule 1-46. Examination. Assessment of job-related competencies, knowledge, skills, abilities, and job fit to screen and rank applicants for the eligible list.

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. Synonymous with contractor.

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.

Board Rule 1-54. Laid Off. Involuntary non-disciplinary separation from the state personnel system and, if certified, placement on a reemployment list.

Board Rule 1-55. Layoff. Process of involuntarily separating an employee due to abolishment of the position for lack of work, lack of funds, reorganization, or displacement by another employee exercising retention rights.

Board Rule 1-56. Non-Permanent Position. A position established for a six-month period or less. It may be a full-time or part-time work schedule. Synonymous with temporary.

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 six months or on an annual, seasonal basis. It may be a full-time or part-time work schedule.

Board Rule 1-62. Position. An individual job, as defined by an appointing authority, within the state personnel system.

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.

Board Rule 1-65. Resignation. Voluntary separation from the state personnel system.

Board Rule 1-66. Retention Credit. Total time credited to an employee in determining retention rights for a layoff situation.

Board Rule 1-67. Retirement. Separation of an employee from the state personnel system who is eligible to retire under the provisions of the Public Employees Retirement Association.

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 typically do not change unless the context of a specific rule requires otherwise.

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.

1-74. 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.

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 1-78. Unclassified Position. A position in state government that is not covered by the state personnel system.

Chapter 2 Jobs

Authority for rules promulgated in this chapter is found in §§24-50-104(1)(b), 24-50-109.5, and 24-50-135(3)(a), (b), and (c), 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. An official job description and written request for an evaluation must be submitted when permanent and substantial changes have been made to the position. Absent extenuating circumstances, the appointing authority must submit the written request to the department’s personnel office within six months.

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. 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;

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.

Senior Executive Service (SES)

2-11. The senior executive service is an alternative performance-based pay plan available for employees in positions that are in the management class and are responsible for directly controlling, through subordinate managers, relatively large or important segments of a principal department, including the acquisition and administration of human, fiscal, operating, and capital resources, and direction and guidance of significant programs, projects, and public policy development. (Refer to the senior executive service section of the "Compensation" chapter.)

A. A position may be considered for inclusion in the senior executive service only upon the nomination of the department head. The Director shall review each nominated position to determine whether it should be included in the senior executive service and to ensure that the statewide total does not exceed 125 positions. The Director's decision to place a position into, or remove a position from, the senior executive service is final and not subject to appeal. (5/1/06)

B. Senior executive service positions shall be allocated by the Director to individual departments, excluding institutions of higher education, according to the following: departments with less than 300 classified employees may have up to five; departments with 300 to 2000 classified employees may have up to 10; and departments with more than 2000 classified employees may have up to 15 senior executive service positions. Exceptions to the limits of this paragraph may be approved by the Director.

C. The department head may decide not to renew the contract for any reason. As part of the negotiation process and in consideration for a salary that exceeds the maximum of the management class, an employee entering into a senior executive service contract may be required to waive all appeal, disciplinary, grievance, and other rights and privileges of the state personnel system with respect to the expiration of the non-renewed contract. If the department head gives the employee written notice of non-renewal by May 1, the department head shall either separate the employee from state service upon expiration of the contract on June 30 or appoint the employee to a vacant non-senior executive service position for which qualified.

D. If the department head has not given the employee timely written notice of non-renewal and no new contract is provided to the employee by July 1, the employee is removed from the senior executive service pay plan and returned to the traditional classified pay plan. The employee's salary shall be set at either the contract salary or statutory salary lid, whichever is lower. If a contract is provided and the employee fails or refuses to sign by July 1, the employee shall be deemed to have resigned effective June 30.

2-12. It is not considered a promotion when an employee's current position is approved for and moved into the senior executive service. Movement out of senior executive service is not considered a demotion. No employee shall be required to accept a senior executive service pay plan with respect to the employee's current position. All provisions of the rules apply to employees in the senior executive service unless specifically noted otherwise.

Board Rule 2-13. Any employee entering or remaining in the senior executive service pay plan on or after July 1, 2003, waives retention and reemployment rights with respect to any other position in the personnel system pursuant to 1-19B, but shall have reinstatement privileges with respect to any vacant position in the employee's current or previously certified class.

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 and group benefit contributions, which shall be effective as provided by law.

3-4. When upward pay grade changes are implemented, the grade minimum and maximum shall be adjusted and no employee shall be paid below the new grade minimum, except in disciplinary actions.

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 when it falls above the new grade maximum. 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.

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.

1. System maintenance studies;
2. Upward, downward, or lateral movements;
3. Base pay changes for the Teacher I class;
4. Changes in pay grade minimums and maximums to implement approved annual compensation changes;
5. Salary adjustments to the base pay of employees from the approved annual compensation changes, subject to the new grade maximum;

6. Bring salaries to the new grade minimum as a result of compensation survey pay grade changes, except in disciplinary actions;
7. Annual performance salary adjustments.

3-9. A new employee, including one returning after resignation, is typically hired at the grade minimum unless recruitment difficulty or other unusual conditions exist. In those documented instances, the hiring salary may be a rate that does not exceed grade maximum.

A. Reemployed employees are compensated at the base pay rate held at the time of layoff, including a saved pay rate if it is within three years of the date the employee was placed in saved pay. This also applies to employees returning during the initial contract period for an unclassified appointment.

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.

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 position. Base pay shall be any rate between the employee's current rate and the grade maximum, subject to the provisions of the following in-range movements.

In-Range Salary Movements. 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 than new hires or less experienced employees over a period of time resulting in documented ongoing retention difficulties. Thus, there is a valid need to increase one or more employee's base salary in recognition of 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.

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.

Annual Performance Salary Adjustments

3-19. Any permanent employee is eligible for an annual performance salary adjustment, except as provided below. Prior to the payment of annual performance salary adjustments, the Director shall specify and publish the percentage ranges for performance levels based on the available statewide performance pay funding. All performance salary adjustments are based on the final overall rating and are effective on July 1. The employee must be employed on July 1 to receive payment of an adjustment. The employee's current department as of July 1 is responsible for payment of the adjustment.

A. A department's performance program must address payment of a performance salary adjustment for employees hired into the state personnel system during the performance evaluation cycle. In the absence of a specific provision in the program, the employee shall receive the full performance salary adjustment percentage determined by the employee's department for the performance level achieved.

B. If the final overall rating is excellent, the adjustment to base pay shall not exceed the grade maximum. Any portion of the adjustment amount that exceeds grade maximum shall be paid as a one-time lump sum in the July payroll. The statutory salary lid does not apply to any non-base building portion of the adjustment.

C. If the final overall rating is not excellent, the adjustment cannot exceed the grade maximum. If base pay is at grade maximum or in saved pay above the maximum, the employee is ineligible for a performance salary adjustment.

D. If the final overall rating is needs improvement, the employee is ineligible for an annual performance salary adjustment.

E. An employee granted an annual performance salary adjustment shall not be denied the adjustment because of a corrective or disciplinary action issued for an incident after the close of the previous performance cycle.

F. Base building adjustments are permanent and paid as regular salary.

3-20. Departments are strongly encouraged to use incentive awards.

Incentive Awards

3-21. An appointing authority may grant an immediate cash or non-cash incentive award in recognition of special accomplishments or contributions throughout the year or to augment an annual performance salary adjustment, e.g., on-the-spot cash awards, work-life programs, or administrative leave. The statutory salary lid does not apply to these incentive awards. Departments must develop and communicate, prior to use and on an ongoing basis, a plan

outlining their award program. Such plans shall be developed with the input of employees and managers. Records on any aspect of this program must be provided to the Director when requested.

Teacher Plan

3-22. The pay grade for Teacher I is determined by the employee's academic achievement level (not proficiency or level of responsibility) as evidenced by credentials. Base pay shall not be adjusted to a lower pay grade for deficiencies in performance or discipline, except for falsification of credentials. However, base pay may be adjusted downward within the grade for deficiencies in performance or discipline.

3-23. For movement to and from the Teacher Plan, use the maximum of the appropriate level in the teacher class series to compare with the maximum of the non-teacher class to determine if the action is a lateral, upward or downward movement and as the basis for computing base pay.

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 the annual performance salary adjustment. 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.

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.

Senior Executive Service

3-25. Employees in the senior executive service shall be compensated based solely on performance as established in the annual contract, which must be negotiated by July 1 of the contract year, or within 30 days of hire or movement within the plan for the remainder of the contract year. All contracts expire on June 30 and no employee shall remain in the senior executive service without a contract. The salary shall not exceed the maximum allowed for the position in the management class by more than 25 percent. Employees are not eligible for any pay adjustments, such as the annual performance salary adjustment. Current performance contracts may be modified during the contract year but not compensation. Compensation may only be changed at the end of a contract period, and may increase, decrease, or remain unchanged from the previous year. Compensation may change if the employee moves to another position.

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. 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.

3-28. Overtime is the time a non-exempt employee works in excess of the 40 hours during a standard workweek (168 consecutive hours in seven consecutive days). Appointing authorities may apply different work periods for law enforcement and health care employees as permitted by federal law. 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.

A. 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.

Eligibility

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, except for failure to timely evaluate an employee in accordance with the "Performance" chapter. 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.

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 incentive awards but such awards shall not be tied to hours worked.

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 that are not kept on a centralized basis.

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 is additional pay beyond base pay for a minimum of two hours when an eligible employee is required to report to work before or after a scheduled shift (not a continuation of the shift). 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.

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 is significantly restricted; however, the employee is still free to use this personal time effectively. 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.

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. 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. Records of any aspect of these differentials must be provided to the Director when requested.

A. Counteroffer to a verifiable job offer may be a 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.

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. Hazardous Duty 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.

Voluntary Separation Incentive Program (VSIP)

3-52. Voluntary separation incentives are discretionary financial incentives that may be offered to permanent employees as an alternative to a layoff in progress or anticipated based upon documented lack of funds, lack of work, or reorganization. Separation incentives are 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 separation incentive plan before a department makes any separation incentive offers.

3-53. The Director shall establish and publish, at least annually, the amount and limitations of separation incentives taking into consideration prevailing market practice.

3-54. The employee and department must execute a written contract before payment of any separation incentive. The contract must include the following provisions.

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 separation is voluntary and not coerced or obtained through means other than the terms of the contract;
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. The total amount of the separation incentive and a statement that the amount is within the Director's parameters.

Chapter 4 Employment And Status

Authority for the rules promulgated in this chapter is found in §24-50-112.5, 114, 132, 137, 146, and 24-50-109.5, C.R.S. Board rules are identified by cites beginning with "Board Rule".

General Principles

4-1. State residents shall have an equal opportunity for entry into the state personnel system after fair and open competition.

4-2. The Director shall establish rules and written guidelines to implement the selection system. Selection is based on quality of performance and job-related ability as measured by examinations of competency. All applicants must meet minimum requirements for the vacancy in order to be referred or appointed.

Recruitment

Board Rule 4-3. A department may request that the Board grant a residency waiver when the department can show:

A. the position(s) involved requires special education or training; or

B. the position(s) involved requires special professional or technical qualifications; and

C. there is an insufficient instate applicant pool; and

D. it is not feasible to train and hire from within.

If the Colorado Unemployment Index, or its equivalent, reflects an unemployment rate of less than 3%, and a department's turnover rate for employees within the class series subject to the waiver request is greater than 10%, a presumption in favor of a residency waiver for the position(s) shall exist.

The Board may require that a department provide written reports to the Board regarding the status of recruitment while subject to a residency waiver.

4-4. Job vacancies shall be announced in locations where potential applicants might reasonably expect to find them. Statewide promotional and open competitive positions must be listed on the Internet.

4-5. Applications must be submitted in the prescribed format as specified in the announcement. The Director will maintain a procedure for voluntary, confidential self-identification to comply with state and federal requirements.

Methods

Board Rule 4-6. Appointing authorities may fill vacancies by transfer, demotion, reinstatement, temporary appointment, or appointment from an employment list.

4-7. At the discretion of the appointing authority, transfers, non-disciplinary demotions, and reinstatements may be considered before or along with employment lists. Employment lists are used in the priority order established by law and discussed below.

4-8. Employees appointed from a departmental reemployment list for a class must be qualified for the position. If a departmental reemployment list does not exist, the appointing authority has the

discretion to consider reinstatements and other departments' reemployment lists before or along with promotional or open-competitive lists.

4-9. Transfer is an appointment of a qualified employee to a different position in the same class or with the same grade maximum. An employee or an appointing authority may initiate a transfer. When the appointing authority(s) initiates the transfer within the same department and the employee refuses it, the employee is deemed to have resigned. If the transfer is outside 25 miles, is longer than six months, and was not a condition of employment, the employee's name is placed on the reemployment list.

4-10. Non-disciplinary Demotion is a voluntary change to a class with a lower grade maximum.

4-11. Reinstatement is a discretionary appointment of a former or current employee to a class in which the person was certified and either resigned or voluntarily demoted in good standing. The person may be reinstated to a related class with the same or lower grade maximum than the previously certified class.

4-12. Conditional or Provisional is a temporary appointment to a permanent position approved by the Director. Provisional appointments are made only if the position cannot be filled conditionally.

Assessment Of Qualifications

4-13. Except where required by law, experience will substitute for required education. Applicants for specifically announced positions must be notified whether they qualify. Reasonable notice of pertinent information must be provided to qualified applicants. Persons with disabilities may request reasonable accommodation at least three working days prior to the administration of any examination.

4-14. 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. Examinations include any professionally accepted assessments of qualifications, competencies, and job fit. Examinations may include, but are not limited to, one or more of the following: record review, structured interviews, written tests, performance, oral, physical, training evaluations, experience evaluations, performance evaluation ratings, or any job-related assessment. Assessment tools 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 Public Records Act.

4-15. Applicants may appeal the content or conduct of an examination to the Director in accordance with the "Dispute Resolution" chapter.

Employment Lists

Board Rule 4-16. If filling a vacancy from an employment list, lists must be used in the following order: departmental reemployment, promotional, then open-competitive.

Board Rule 4-17. Departmental Reemployment lists are established on a departmental basis as listed in the "Separation" chapter and contain the names of certified employees who are laid off, voluntarily demoted in lieu of layoff or as a result of a position's allocation, or return (during the initial appointment period) from a position outside the state personnel system. Employees may limit their availability to specific locations and work schedules. Departmental reemployment lists last for one year.

Board Rule 4-18. Promotional eligible lists contain the names, in rank order, of current employees and persons on reemployment lists who have successfully completed the assessment process. Open-competitive eligible lists contain the names, in rank order, of any persons who have successfully completed the assessment process. The final converted passing score plus any applicable veteran's preference points when the list is open competitive determines placement on these lists.

4-19. Cancellation or expiration of a list does not affect the statutory rights of employees on military leave.

4-20. Addition of names and adjustment of rankings or scores do not affect prior appointments or referrals.

4-21. The Director shall determine the reasons for removal from employment lists or consideration for a vacancy. Such reasons include, but are not limited to, the following.

A. Reasons for mandatory removal from all employment lists:

1. attempts to use political pressure or bribery;
2. unauthorized access to examination information;
3. false statements or attempts to practice fraud and deception during the application process;
4. violation of state statutes or regulations that may affect the ability to perform the job; or,
5. no longer interested in or available for employment with the state personnel system.

B. Reasons for mandatory removal from one employment list:

1. a record of unsatisfactory performance;
2. failure to meet the minimum qualifications;
3. refusal of an appointment or conditions previously indicated as acceptable;
4. evidence of use of substances that may affect job performance adversely;
5. failure to meet the conditions of employment such as physical requirements, background check, or others as listed in an announcement; or,
6. appointed to a position in the class for which the list was established.

C. Reasons for discretionary removal from one employment list:

1. failure to respond to a referral within the time allowed;
2. failure to be appointed after referral and interview for three or more vacancies with the same appointing authority;
3. documented failure to demonstrate proficiency in a required job-related competency set forth in the announcement;
4. no longer interested in or available for employment with the department; or,
5. failure to report for any portion of the interview process.

4-22. Written notice shall be provided to persons removed from employment lists with the exception of 4-21 (A)(5), (B)(3) and (6), and (C)(1), (4) and (5). Except for removal from a departmental reemployment list, the affected person may request, in writing, a review of the action in accordance with the "Dispute Resolution" chapter. Removal from a departmental reemployment list or denial of reemployment rights may be appealed to the Board in accordance with the "Dispute Resolution" chapter.

Referrals

4-23. If a departmental reemployment list exists, all those qualified are referred in alphabetical order and no other employment lists are used.

4-24. Upon receipt of a request to fill a vacancy, referral of the three highest-ranking candidates will be made from the appropriate eligible lists. All those referred must be notified of their referral, and may be considered for appointment. Such consideration may include record review, interview, additional screening to determine final interviews, or other merit-based criteria. (5/1/06)

Selection

4-25. All those who respond to a referral should be interviewed in compliance with state and federal law. Any additional assessment conducted after the referral must be related to the job. Background investigations and physical or psychological examinations are allowed when appropriate as determined by the job analysis and state or federal guidelines. The appointing authority should notify those who are not selected.

Employee Status

Board Rule 4-26. Probation applies to permanent appointments or, at the discretion of the appointing authority, reinstated former certified employees. The probationary period must not exceed 12 working months except as provided in the "Time Off" chapter. If the probationary employee separates from employment for any period of time, a new service date is required based on the date of rehire.

Board Rule 4-27. 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 4-28. Trial Service applies when a current certified employee promotes or reinstates. An appointing authority may require an employee who transfers to a different class with the same pay grade maximum to serve a trial service period. 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.

A. 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, may be administratively separated with the right to appeal. The appointing authority has discretion to administer corrective or disciplinary action instead of reversion or administrative separation.

Board Rule 4-29. Certified applies to employees who successfully complete a probationary or trial service period. A certified employee who demotes remains certified. A certified employee who transfers remains certified unless the appointing authority requires a trial service period. Early certification is not allowed if a selection appeal is pending.

A. 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.

Board Rule 4-30. Filling Vacancies with State Employees Outside the State Personnel System. Any state employee outside the state personnel system must successfully complete the examination process before being placed in a position in the state personnel system. Treatment of the employee 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.

Temporary Status

4-31. Temporary applies to a qualified person who is appointed to a non-permanent position. 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 grade 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 are permanent and full-time, the position shall not be filled through a succession of temporary appointments. A department head 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, when services are seasonal or annually recurring. However, either a permanent part-time or temporary position may be used.

B. Repealed. (3/9/06)

4-32. Conditional applies to a qualified certified employee who temporarily promotes into a permanent vacancy for which no eligible list exists. Time spent in conditional status is not a break in service. If the employee is subsequently appointed to the position 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.

4-33. Provisional 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. If the person is subsequently appointed to the position from a list, the probationary period begins on the date of the permanent appointment. Provisional employees do not have the rights and benefits provided to permanent employees, except those mandated by law and pay grade minimum.

Substitute Appointment

4-34. A substitute appointment may be made to perform the duties of a filled position during a leave of absence or for training purposes. This appointment shall not exceed six months 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.

Chapter 5 Time Off

Authority for rules promulgated in this chapter is found in §§24-50-104 (1)(g) and (7), 25-50-109.5, 1-7-102, 12-34-101.5, 13-71-119 and 134, 19-5-211, 24-11-101 and 112, 24-34-402.7, 24-50-401(1), and 24-50 Part 3, C.R.S. Board rules are identified by cites beginning with "Board Rule".

General Principles

5-1. Regular attendance and punctuality are an important part of each state job so employees must use leave responsibly. They are responsible for requesting leave on the ***State of Colorado Leave Request and Authorization*** form (or equivalent form) as much in advance as possible, providing the general reason for the leave and sufficient information. The leave form shall balance the employee's privacy rights and the employer's need to know in order to make the Family/Medical Leave designation. Appointing authorities are responsible for approval of all types of leave, subject to these provisions. They are expected to use good business judgment and leave management practices to balance the needs of employees with those of the state, to prevent abuse, and to comply with all legal requirements. Unauthorized use of any leave may result in the denial of paid leave and/or 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 an appointing authority has denied the use of paid leave.

5-3. Departments must report, in a timely manner, the use of any type of leave when requested by the Director for use in the accurate tracking, reporting, and costing of information used to make policy decisions. Departments are required to have an internal control process to assure accuracy and compliance with rule and law.

Personal Leave

5-4. Annual leave is provided for an employee's personal needs. Use is subject to the approval of the appointing authority who 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 leave that will be subject to forfeiture.

5-5. Sick leave is provided in the event time off is needed for health reasons. This includes diagnostic and preventative examinations, treatment, and recovery. Accrued sick leave may also be used for the health needs of the employee's child who is under the age of 18 or an adult child incapable of self care, parent, spouse, 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. Note that this definition of family is different from family/medical and bereavement leave.

5-6. A ***State of Colorado Medical Certificate*** form (or equivalent) completed by a health care provider must be provided within 15 calendar days, absent extenuating circumstances, for any health-related absence of more than three consecutive, full working days. Certification may also be required for absences of fewer days at the discretion of the appointing authority to determine if family/medical leave applies or when a pattern of absences indicates possible abuse. 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. Failure to provide the certificate will result in denial of leave and possible corrective/disciplinary action.

5-7. If the condition is covered by FML and does not involve workers' compensation or a reasonable accommodation under the Americans with Disability Act, there shall be no contact with the employee's health care provider. If the department employs a health care provider and the employee has given written permission, that health care provider may contact the employee's health care provider to clarify content or verify authenticity.

5-8. The appointing authority has the right to request a second opinion on the **original** certificate. The department must pay the expenses for the second opinion and chooses a health care provider who is not employed by, or on contract with, the state. An appointing authority may require a third opinion which is final and binding, if the original and second opinions conflict. Again, the department must pay the expenses but the health care provider is mutually agreed upon. Second and third opinions are not permitted on additional certificates for recertification purposes.

5-9. If an absence is more than 30 days for the employee's own condition, a fitness-to-return certification is required for that condition. The certification may be required for absences of 30 or fewer days when it is a business necessity given the nature of the condition in relation to the assignment. It cannot be required for those taking intermittent family/medical leave. The employee is allowed at least 15 calendar days from the date of the request to provide the required certificate. Failure to provide a fitness-to-return certification as instructed could result in delay of return, a requirement for a new medical certification, or administrative discharge as defined in the next rule.

5-10. If an employee has exhausted all credited paid leave, unpaid leave may be granted or the employee may be administratively separated by written notice after pre-separation communication. The notice must inform the employee of appeal rights and the need to contact PERA on eligibility for retirement. No employee may be administratively separated 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 who can reasonably be accommodated without undue hardship. When an employee has been separated under this rule and subsequently recovers, a certified employee has reinstatement privileges.

5-11.

Personal Leave Earning, Accrual, Payout, And Restoration

Annual Leave					Sick Leave			
Yrs. of Service*	**Hrs./Mon.**	**Max. Accrual****	**Restoration**	**Payout**	**Hrs./Mon.**	**Max. Accrual***	**Restoration**	**Payout**
1st through 5th	8	192 hrs.	Earning and accrual rates restored when eligible for reinstatement or reemployment.	Upon termination or death, unused leave 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 upon initial termination, 1/4 of unused leave paid out to the maximum accrual rate.
6th through 10th	10	240 hrs.						
11th through 15th	12	288 hrs.						
16th and above	14	336 hrs.						

* Computed from 1st calendar day of the month following hire unless employee began work on the 1st working day (then computed that month). Employees with prior state service, in or out of the state personnel system, earn leave based on the total whole months of service.

** 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 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. A terminating employee shall be compensated for leave earned through the last date of employment provided the employee is at work or on paid leave through the termination date. Movement to the next higher leave-earning rate is adjusted one month forward for each 173 working hours of unpaid leave in a 12-month period, except for unpaid military leave.

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.

Workers' Compensation: When an employee is receiving workers' compensation payments, accrued paid leave is used 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.

Employees are required to use paid leave during the 30-day waiting period for short-term disability benefits.

Leave Sharing Program

5-12. This program allows the transfer of annual leave between permanent state employees under certain circumstances subject to the discretionary approval of a department head. Departments must develop and communicate their programs prior to use. The authority to approve leave sharing shall not be delegated below the department head without advance written approval of the Director.

5-13. To be eligible to apply, the employee must have at least one year of state service. Leave sharing is not an entitlement even if the individual case is qualified. Donated leave is not part of the annual leave pay out upon termination or death.

A. A leave sharing program is established for catastrophic illness or injury that poses a direct threat to life, e.g., cancer, serious accident, major heart attack. It applies to the employee or an immediate family member as defined under sick leave. All personal accrued leave and compensatory time must be exhausted and the employee must not be receiving short-term disability, long-term disability, or workers' compensation benefits. The transfer of donated leave between departments is allowed with the approval of both department heads.

B. A department head may expand the leave sharing program to include employees on active military service in the war against terrorism or other military operations who are experiencing serious financial hardship during the initial call up. Donated leave is used to make up the difference between the employee's base salary (excluding premiums) and the total gross military pay and allowances. Donated annual leave is only available after exhaustion of military, administrative and annual leave, and compensatory time. Transfer of donated leave between departments is not allowed.

C. A department head may expand the leave sharing program to include employees directly affected by, or serving as first responders to, life-altering catastrophic events or emergencies, e.g., wildfire, flood, tornado. It includes employees who suffer loss of life or substantial loss or complete destruction of the employee's residence as a result of a natural disaster or accidental catastrophe. It does not apply to foreseeable situations that could have been prevented or minimized by planning or action on the part of the employee or for a short-term financial set back or inconvenience. Donated leave is only available after exhaustion of all other applicable paid leave and compensatory time. Transfer of donated leave between departments is allowed with the approval of both department heads.

Holiday Leave

5-14. Permanent full-time employees are granted up to eight hours, prorated for part-time work or unpaid leave in the month, to observe each legal holiday designated by law, the Governor, or the President, unless the employee separates before the holiday. Appointing authorities may designate alternative holiday schedules for the fiscal year.

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. When granting the request, the department must be open and at least minimally operational for both days and the employee must have work to perform.

5-15. Each department shall establish equitable and consistent policy to ensure that all permanent employees are awarded their full complement of holidays.

Other Employer-Provided Leaves

5-16. The types of leave in this section do not accrue, carry over, or pay out.

5-17. 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. Bereavement leave cannot be used for settling an estate. The decision to grant and the amount of leave are based on the relationship to the deceased and the distance and mode of transportation.

5-18. Military leave provides up to 15 paid workdays in a calendar 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.

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 a position in the same class within the same department. This leave is not a break in service.

5-19. Jury leave provides paid leave to permanent employees for jury duty. Temporary employees are granted up to three days of jury leave. Jury pay is not turned over to the department.

5-20. Administrative leave may be used to grant paid time in situations where 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 considers prudent use of taxpayer and personal services dollars and the business needs of the department. Pursuant to 1-9, the appointing authority has the power to define the job. Activities performed in an official employment capacity, including job-related training and meetings, voluntary training, and conferences are typically work time and do not require administrative leave. Participation in hearings or settlement conferences at the direction of the Board or Director is work time. Testifying in court or official government hearings on job-related matters when required by an appointing authority or subpoena is work time. Administrative leave is not intended to be a substitute for such things as corrective or disciplinary action or other benefits and leave.

A. Any administrative leave granted to an employee 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. A department head may adopt a policy granting one period of administrative leave for the initial call up to active military service in the war against terrorism or other military operations. Such leave shall not exceed 90 calendar 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.

5-21. 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.

5-22. Unpaid leave may be approved by the appointing authority unless otherwise prohibited. The appointing authority may also place an employee on leave without pay for unauthorized absences and may consider corrective and/or disciplinary action. Those on unpaid leave receive no service credit and the service date is adjusted one month forward for every 173 hours accumulated in a 12-month period, except those on military leave, voluntary furlough, or while waiting for retention rights. Probationary and trial service periods are extended by the number of days on unpaid leave and may be extended for periods of paid leave.

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 a type of unpaid absence 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 is a type of unpaid leave 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. Leave is available for seeking a restraining order or health care for the employee or employee's children, securing or seeking safe housing, seeking legal assistance, and participating in legal matters. An appointing authority may require documentation of the need for 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.

Family/Medical Leave (FML)

5-23. The state is considered to be a single employer under the Family and Medical Leave Act (FMLA) so the following provisions apply to all employees in the state personnel system. This section fulfills part of the notice requirements under the FMLA.

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, or spouse for physical care or psychological comfort; or, (4) an employee's own serious health condition. Definitions of a serious health condition and health care provider are in the "Definitions" section of the "Organization, Responsibilities, Ethics, and Definitions" chapter.

5-25. To be eligible, an employee must have one year of total state service as of the date leave will begin. Such service is time on the payroll, regardless of employee type, and need not be consecutive time. If temporary, the employee must also have worked 1250 hours within the 12 months prior to the date leave will begin. Time worked includes overtime hours and paid leave (excludes any type of unpaid leave). If the employee has worked full time, up to 520 hours per fiscal year will be granted. If part time, the amount of leave is prorated based on the regular appointment or schedule. If a part-time employee works an irregular, variable schedule, the amount of leave is prorated based on the average number of hours worked in the 12 weeks prior to the beginning of the leave (rounded to the nearest 1/100 of a hour). Any extension of leave

beyond the amount entitled to is not FML and is subject to other provisions in these chapters. Requiring an employee to use more FML than needed is not permitted.

5-26. In the case of a serious health condition and when medically necessary, FML can be used on an intermittent basis or with a reduced work schedule. Requests for intermittent leave or a reduced schedule in other circumstances may be granted at the sole discretion of the appointing authority. To accommodate such requests, the appointing authority may temporarily transfer the employee to another position. No temporary reduction in schedule is allowed until all paid personal leave is exhausted.

5-27. All other types of leave run concurrently with FML and do not extend the time the employee is entitled to. The employee must use all accrued personal leave subject to the conditions for use of such leave before being placed on unpaid leave for the remainder of FML, except for workers' compensation and compensatory time. Compensatory time is not leave and is not counted against the employee's FML entitlement. In the case of workers' compensation, the employee must comply with the requirements of that plan and, although the department must make a timely designation, time is not counted against the employee's FML entitlement as long as the employee is using paid leave to make base pay whole. In addition, an employee cannot be required to accept a temporary "modified duty" assignment even though workers' compensation benefits may be affected.

5-28. Leave-without-pay provisions 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. Family/medical leave cannot be waived. The appointing authority is expected to obtain the necessary information to make the proper designation. Such designation must be made within two business days, absent extenuating circumstances, after the appointing authority is aware of the reason for the leave. The appointing authority must notify the employee in writing of the employee's rights and responsibilities under FML. This notice requirement is met with the ***State of Colorado Employer Notification*** form (or equivalent). A copy of this notice must be maintained in the proper official file. The appointing authority may provide a verbal designation but it must be confirmed in writing, with the notice within one week. FML may be approved conditionally pending receipt of required documentation, e.g., medical certificate, proof of familial relationship. Documentation of any dispute over the designation must be placed in the proper official file.

A. If the appointing authority is aware of the reason for leave, either before or during the leave, and fails to designate it as FML in a timely manner, any leave used prior to the notice cannot be designated as FML. The employee receives all of the protections of FML, but the absence preceding the designation may not be counted against the FML entitlement.

B. FML cannot be designated retroactively once the employee returns to work unless: (1) the appointing authority was not aware of the reason for the leave until the employee returned; or, (2) the leave was conditionally designated as FML pending receipt of certification. Upon receipt of the information, the appointing authority must designate and notify the employee in a timely manner whether the leave qualifies as FML, including confirming or withdrawing a conditional designation.

5-30. Employee Requirements. Written notice of the need for leave is to be provided by the employee 30 days in advance or as soon as practical. "As soon as practical" means providing written notice within two business days, if feasible, after the employee verbally requests the leave. Failure to provide timely notice when the need for leave is foreseeable, and 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.

5-31. 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.

5-32. The employee is required to provide proper medical certification, including additional medical certificates and fitness-to-return certificates as prescribed under sick leave. Failure to provide certification in a timely manner may result in a delay of starting or continuing FML. If the required documents are never provided, the leave is not FML and the other provisions of this chapter cover the employee.

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.

5-34. 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. 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 5-10 subject to any applicable ADA provisions. 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.

5-36. 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.

5-37. 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.

5-38. Injury Leave. An employee, other than an employee in provisional status or temporary status, 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.

A. If after 90 occurrences of injury leave an employee still is unable to work, the injury leave shall be terminated and the employee placed, on a "make whole" basis, first on accrued sick and annual leave, and after exhaustion of all paid leave, may be given unpaid leave. Workers' compensation payments after termination of injury leave shall be made to the employee.

B. If the employee is unable to return to work after using all sick and annual leave, the appointing authority may invoke the provisions of 5-10. Termination of service under that provision will in no way affect continuation of payments under the Workers' Compensation Act.

C. If a determination is made that the injury or occupational disease was caused by willful misconduct of the employee or by willful disobedience of reasonable rules or regulations, and the temporary compensation payment is reduced because of any such reasons, the employee shall not be entitled to or be granted injury leave. Any absence resulting from the injury or occupational illness shall be charged, on a “make whole” basis, as accrued sick or annual leave, then at the option of the appointing authority, unpaid leave may be granted and the temporary compensation payments shall be made to the employee.

D. If an employee incurs injury that is compensated by insurance for the first three days and for which the carrier or third-party administrator made no compensation, the employee shall not be entitled to or be granted injury leave for those three days unless the insurance payment is endorsed over to the employing department.

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 guidelines governing the performance pay system. The performance pay system does not apply to employees in the senior executive service or medical plan. Departments must develop a performance pay program that includes performance management, performance pay, and dispute resolution components of the performance pay system that 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 the 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. These guidelines shall be used in a timely manner 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.

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 first statewide uniform performance cycle shall end no later than March 31, 2006. All subsequent performance cycles shall be April 1 to March 31.

E. A planning meeting with the employee that shall occur by the date specified in the department's performance pay program.

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 four performance pay system's rating levels. The Director shall define the performance rating levels and publish these standard definitions in written

directives. Before the first statewide uniform performance cycle, a department's performance pay 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.

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 pay system and the department's performance pay program. Such plans 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.

J. Specify the minimum common criteria for distinguishing performance salary adjustments. These criteria must describe how these standards reflect the department's mission and operational needs and how the requirement for consistent treatment of similarly situated employees is met.

1. Source of funds (e.g., cash or general), method of funding (e.g., appropriated or memorandum of understanding), and length of state service shall not be criteria.

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 a performance salary adjustment. 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 workweek following the pre-disciplinary meeting.

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 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. Employees may submit a written statement to be attached to disciplinary action.

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 §24-50-124, 109.5, 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 Governor, Director, and all appointing authorities may 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, voluntary unpaid leave, voluntary furloughs, and voluntary separation incentives.

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 written 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 notice 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.

Board Rule 7-5. An employee may withdraw a resignation within two business days after giving notice of resignation. The appointing authority has discretion to approve a request to withdraw a resignation that is made more than two business days after the notice of resignation.

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.

A. Reorganization means a change in the fundamental structure, positions, or functions accountable to one or more appointing authorities. The department shall post a business plan documenting the reorganization in a conspicuous place before issuing the first layoff notice. This plan must include an organizational chart, the reasons for the change, the

anticipated benefits and results, and a general description of the expected changes and their effects on employees.

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

B. If a position is allocated downward and the employee elects not to remain in the position, the employee will be laid off or given retention rights pursuant to the provisions of this chapter.

C. If a position is allocated upward and the employee does not qualify or is not appointed, the employee will be laid off or given retention rights.

Board Rule 7-8. Departments must consider seniority and performance in making layoff decisions. Departments may consider other factors in addition to seniority and performance.

Board Rule 7-9. In making layoff and retention rights decisions, departments shall use time bands to determine seniority. Departments shall also develop a matrix calculation for ranking priorities within the time bands.

Board Rule 7-10. 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.

Board Rule 7-11. 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 before full-time. 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.

Notice Requirements

Board Rule 7-12. 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 or sent by certified mail, in which case it is deemed delivered when it is actually received or five days after the certified mailing, whichever is earlier.

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 7-13. A certified employee may exercise retention rights within the principal department. 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. Certified employees of

the Department of Higher Education have retention rights in central staff, Colorado Historical Society, and Colorado College Access Network. A department may limit retention rights to major divisions of the department only if its department head requests the limitation and the Board approves that request in advance of the layoff.

Determining Priorities For Layoff And Retention Rights

Board Rule 7-14. Time bands for each affected class 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 2002 creates the most junior time band of 2000-2002. Employees in the most junior time band must be displaced before employees in more senior time bands.

Board Rule 7-15. For purposes of layoff, seniority is the calendar year in which continuous state service began, including up to 10 additional years (rounded to the next whole year for partial years) of military service for those eligible for veteran's preference.

A. Continuous state service includes permanent status and state employment outside the state personnel system. An employee who has a break in service of less than 90 days, 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 7-16. The department head must establish a matrix for ranking employees within a time band. The matrix must be consistently applied throughout the retention area. 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 no veteran can be displaced before a non-veteran regardless of rank.

Board Rule 7-17. 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 retention area must establish a consistent numerical value for each level of performance. If an employee does not have performance evaluations for any of the past three years, any missing rating is considered to be satisfactory for purposes of this calculation.

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. 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.

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

1. Funded vacant position in the current certified class. If there are no vacant positions, occupied positions are offered in the following order: provisional, probationary, conditional, certified.
2. Funded vacant position in a previously certified class at the same maximum pay rate. If there are no vacant positions, occupied positions shall be offered in the following order: provisional, probationary, conditional, certified.
3. Highest level demotion in a vacant position in the current or previously certified class series. If there are no vacant positions, occupied positions shall be offered in the current or previously certified class in the following order: provisional,

probationary, conditional, certified. An employee can displace another certified employee only if the displacing employee has been certified in the class.

B. Employees in the Teacher I class have retention rights to their academic achievement levels.

Board Rule 7-19. If the highest-level retention opportunity is within a 50-mile radius of the current location, only that position is offered. If the highest-level retention opportunity is outside the 50-mile radius, that position is offered along with the highest-level demotion inside the 50-mile radius. If the employee accepts an offer outside the 50-mile radius, that employee can claim moving expenses as prescribed in fiscal rule.

Board Rule 7-20. If a certified employee is laid off or demoted due to a 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.

Recordkeeping

Board Rule 7-21. Department heads must provide any required or requested information to the Director or Board in a timely manner.

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 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.

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.

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 8-18B above, under the provisions of §24-4-106, C.R.S.

<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 original and one copy of the response must be filed within 45 days after the date the complaint was filed with the Board.

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. The complaint and response will be referred to the Director for investigation. If the complaint is against the Director, the Board will appoint an appropriate investigator from outside the department. A written report will be provided to the Board within 45 days of receipt. The Board will send the written report to both parties. (6/1/06)

Board Rule 8-26. If it is found that there is a reasonable basis for the complaint, the department may file an appeal with the Board within 10 days of receipt of the report. A timely appeal will be set for evidentiary hearing.

Board Rule 8-27. If it is found that there is no reasonable basis for the complaint, and an appeal was 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.

Board Rule 8-28. If it is found that there is no reasonable basis for the complaint and 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.

Board Rule 8-29. If it is found that there is no reasonable basis for the complaint, the employee may file a complaint in district court, regardless of any constitutional or statutory right to a hearing before the Board. A complaint filed in court will not be subject to consolidation nor will the Board have any jurisdiction over it.

Allegation Of Discrimination

Board Rule 8-30. 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 a final written grievance decision, appeal, or performance pay system dispute resolution decision. Except for appeals, the Board will defer action to allow the parties a chance to resolve the issue.

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

Board Rule 8-42. Claims (with no allegation of discrimination) based upon the selection and examination 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.

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 Consolidated Appeal/Dispute Form***" found on the Board and Director's websites 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. 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 examination process, and reversion of a trial service employee for unsatisfactory performance.

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 8-47. 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 the petition for hearing, the respondent shall provide complainant with copies of all documents or information relied upon in reaching its decision that constitutes the subject of the petition for hearing. If the respondent asserts a privilege regarding such documents or information, it shall specify the nature of the privilege and provide complainant 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.

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 Whistleblower claims and allegation of discrimination sections of this chapter, complainant and respondent shall file their respective information sheets with the Board and serve a copy on the other party within 25 days of receipt of the petition for hearing by the Board. 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.

D. In the event an investigation has been referred and is pending pursuant to the Whistleblower claims and allegation of discrimination sections 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.

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, appeals of investigative reports finding reasonable basis for retaliation for disclosure of information, dismissal for failure to perform satisfactorily under senior executive service contracts, and reductions of salary during the term of senior executive service contracts. Issues involving annual total compensation survey, discretionary pay differentials, the granting of in-range salary movements, leave sharing, personal services contracts, job evaluation system and actions, renewals of senior executive service contracts at a reduced salary, and removal of positions from the senior executive service pay plan into the traditional classified pay plan are not subject to appeal.

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.

B. Employees who are separated for failure to perform under senior executive service contracts do not have a right to progressive discipline or to a 6-10B meeting. In such an appeal, the appointing authority must produce evidence that the employee's performance was not satisfactory. The employee shall then have the burden of producing evidence that performance was satisfactory, and shall bear the burden of proof that the appointing authority's decision was arbitrary, capricious, or contrary to rule or law.

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

Discovery

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.

<u>Subpoenas</u>

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 Rule 8-39B.

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.

<u>Security</u>

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:

Colorado State Personnel Director
Attn: Dispute Resolution Process
1313 Sherman, Room 122
Denver, CO 80203

8-79. Disputes must be in writing and copies provided concurrently to the affected department. Use of the standard "***Colorado State Personnel Consolidated Appeal/Dispute Form***" found on the Board's and Director's web sites is required. The dispute must clearly state the following in sufficient detail.

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. Employees do not have the right to appeal movement of positions into or out of the senior executive service.

B. Objection to the content or conduct of an examination. A written appeal must be filed within 10 days from the date of administration of an examination component.

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.

8-82. Any applicant or employee may make direct inquiry to the department or individual involved in matters covered by these procedures to try and achieve informal resolution. However, such discussions do not extend the appeal time limit.

8-83. The Director will promptly acknowledge receipt of the appeal in writing and include instructions and a timetable. The Director will retain jurisdiction over appeals but may appoint an advisory panel or person. All parties must adhere to the Director's timetable.

8-84. Advisors shall be human resource professionals in job evaluation or selection depending on the action appealed.

8-85. The appellant shall file a written position statement with the Director, with copies to the respondent department. Any information relevant to the appeal must be available, subject to statute, to the appellant for inspection prior to the appellant's filing date for a position statement. The appellant must pay the reasonable cost of any copying.

8-86. Upon receipt of the appellants' position statement, the responding department shall file a position statement with the Director.

8-87. Position statements filed by the appellant or respondent must be typewritten and the text double-spaced, using only 8½ x 11-inch paper and shall not exceed five pages. Written sworn statements or documents that support the party's position may be attached.

8-88. Any materials that are not filed on time will be excluded from consideration of the merits of the appeal. Failure to provide a copy of all materials to the affected department may be grounds for denial or dismissal of the appeal.

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 Pay System Disputes

8-94. The performance pay 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.

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;

C. the application of an department's performance pay program to the individual employee's plan and/or final overall evaluation; and,

D. full payment of the performance salary adjustment.

8-96. The following matters are not disputable:

A. the content of a department's performance pay program;

B. matters related to the funds appropriated;

C. the performance evaluations and performance salary adjustments of other employees; and,

D. the amount of a performance salary adjustment, unless the issue involves the application of the department's performance pay program.

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. <u>Dispute Resolution Process.</u> 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 pay program to the individual performance plan and/or evaluation, or full payment of a performance salary adjustment may advance to this stage.

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.

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 pay 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 pay program.

A. In reaching a final decision, these individuals have the authority to instruct a rater(s) to:

1. follow a department's performance pay 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, and job evaluation system and actions). A Director's decision in this type of review is subject only to a discretionary Board hearing.

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 examination 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.

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 a meet labor demand that is for:

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 six months and subsequently be retained as a contract worker by a different department.

F. Repealed. (3/9/06)

G. 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.

10-5. Repealed. (3/9/06)

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 right to add, modify, or discontinue the state group benefit plans as deemed necessary.

11-2. The terms and conditions of the state group benefit plans are controlled by group master contracts or plan documents, which shall prevail in the event of a conflict with these rules. In the event of a conflict with governing laws or regulations, the governing laws or regulations will prevail.

Employer Responsibilities

11-3. All departments shall administer the state group benefit plans in accordance with the contracts, plan documents, governing law and regulations, rules, and written directives. When a department fails to timely notify vendors of employee terminations from the state group benefit plans, it is responsible for payment of total premiums (both state and employee contributions).

11-4. The Department of Personnel will create and make available group benefits materials and direction to departments. All departments will distribute the state group benefits materials and direction to newly hired employees within five working days of hire and to all eligible employees prior to each annual open enrollment period. This applies to all departments, including those that offer their own separate group benefit plans.

11-5. All departments must maintain records of all state group benefit forms, which may be electronic, and all supporting documentation pertaining to the state group benefit plans selected by each of their employees.

Eligibility

11-6. Employees and their dependents must meet the eligibility requirements as defined in state law and rules to qualify for enrollment in the state group benefit plans. Employees and their dependents are not eligible to enroll or continue enrollment in the state group benefit plans when they cannot meet the eligibility criteria as defined in law, rule, and written directives.

Enrollment

11-7. The Director shall establish an annual open enrollment period when eligible employees can enroll, modify, or terminate enrollment in the state group benefit plans for themselves and each eligible dependent, subject to the terms and conditions of the contracts, plan documents and as defined in law and regulation, rule, and written directives.

11-8. Enrollment by employees and their dependents in the state group benefit plans is restricted to initial hire, the annual open enrollment period, and certain other eligible events as defined in law, regulation, or rule. Elections are irrevocable, except as specifically provided by law, regulations, and plan documents. Employees who do not enroll themselves and their eligible dependents during these times cannot enroll until the next annual open enrollment period.

Employee Responsibilities

11-9. Initial enrollments, changes to enrollments, and terminations of enrollment in state group benefit plans require that employees complete, sign, and date the appropriate state forms, which may be

electronic, in accordance with criteria as defined in law and regulations, rule, and written directives. Employees shall provide any and all necessary supporting documentation. The employee's signature on the state forms, which may be electronic, and supporting documentation attests that the information provided is true and complete, authorizes the appropriate employee contribution or authorizes the department to stop employee contributions.

11-10. It is unlawful for any employee, or dependent to provide false, incomplete, or misleading facts or information on any state group benefit enrollment form, affidavit, claim, or other document for the purpose of defrauding or attempting to defraud the State of Colorado. Any employee or dependent who provides false, incomplete, or misleading facts or information on any benefit enrollment form, affidavit, claim, or other document for the purpose of defrauding or attempting to defraud any state group benefit plan shall be reviewed by the Director. If the Director has reasonable suspicion to believe that an employee or dependent has defrauded or attempted to defraud any state group benefit plan, coverage shall be terminated, and the employee or dependent may be denied future enrollment and may be subject to other action.

11-11. Once enrolled in the state group benefit plans, employees must verify the accuracy of employee contributions and enrollment elections for each plan selected and must notify their departments of any verifiable administrative error. Such notice must be in writing and within 10 days of the first payroll deduction in case of an error in contribution or within 10 days of learning of an error in elections. When an employee fails to notify the department of the error within the specified time period, the employee and dependents must maintain enrollment in the existing state group benefit plans selected until the next annual open enrollment period or until the employee or dependents no longer meet eligibility criteria.

11-12. Once enrolled, employees and dependents are responsible for knowing and adhering to written directives regarding enrollment and requirements governing group benefits plans.

11-13. Any eligible event that permits enrollment, modification, or termination of enrollment must be reported on the appropriate state forms accompanied by supporting documentation within 31 days of the event. The effective date of the change is the first of the month following receipt of the documentation unless otherwise specified by law or regulations. If notification of the eligible event is not made on or before the 31st day, such enrollment or modification of enrollment is permitted only during the next annual open enrollment period or when the employee or dependents no longer meet eligibility criteria.

Effective Date Of Coverage

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.

Termination Of Coverage

11-15. Coverage in state group benefit plans is terminated on the last day of the month of employment.

Employee And State Contributions

11-16. To enroll in certain state group benefit plans, employees must elect 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 paycheck or, under certain circumstances, by personal payment for the selected state group benefit plans. The state contribution is added to the employee contribution to complete the total premium for the selected state group benefit plans as defined in law, rule, and written directives.

11-17. An enrolled employee who works or is on paid leave one or more regularly scheduled workdays in a month is eligible for the full state benefit contribution.

11-18. Refunds for employee and state contributions are subject to plan limitations and as defined in law and regulations, rule, and written directives.

Pay Back Requirements

11-19. When there is a difference in the employee's contribution compared to the actual contribution due, the difference is paid by the employee.

Flexible Spending Accounts

11-20. Employees enrolled in the health care or dependent day care flexible spending accounts are required to comply with the Internal Revenue Code, State of Colorado Salary Reduction Plan, law, rule, and written directives, including the irrevocability requirements.

Leave

11-21. While on unpaid leave, employees may continue enrollment in certain state group benefit plans for a period of up to six months in accordance with criteria defined in written directives. The total premium is paid by the employee to the employing department by no later than the time period established in written directives. If the employee fails to pay the total premium by the due date while on unpaid leave, coverage will be terminated in the affected state group benefit plans. Re-enrollment is subject to conditions of the annual open enrollment period, law, rule, and written directives.

11-22. While on voluntary furlough, employees may continue enrollment in certain state group benefit plans in accordance with criteria defined in written directives. The employee contribution is paid to the employing department by no later than the time period as established in written directives. The state contribution is paid in accordance with state law. If the employee fails to pay the employee contribution by the due date while on voluntary furlough, coverage will be terminated in the affected state group benefit plans. Re-enrollment is subject to conditions of the annual open enrollment period, law, rule, and written directives.

11-23. While on family/medical leave, employees may continue enrollment in certain state group benefit plans in accordance with criteria defined in law and written directives. The employee contribution is paid to the employing department no later than the time period as established in written directives. The state contribution is paid in accordance with state law. If an employee fails to pay the employee contribution by the due date while on family/medical leave, coverage may be terminated. 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 still be recovered except for some circumstances beyond the employee's control.

11-24. While on short-term disability leave, employees may continue enrollment in certain state group benefit plans in accordance with criteria defined in written directives. The employee contribution is paid to the employing department by no later than the time period established in written directives. The state contribution is paid in accordance with state law. If an employee fails to pay the employee contribution by the due date while on short-term disability leave, coverage will be terminated in the affected state group benefit plans. Re-enrollment is subject to conditions of the annual open enrollment period, law, rule, and written directives.

11-25. The rules in this section regarding leave do not apply to those benefits paid fully by the state, e.g., basic life and short-term disability. The department continues to pay the full contribution for such benefits.

Consolidated Omnibus Budget Reconciliation Act (COBRA) Continuation Coverage

11-26. The COBRA election to continue enrollment in a state group medical plan, dental plan, and the health care flexible spending account must be offered by each department to eligible enrolled employees or dependents losing coverage due to COBRA Qualifying Events as defined in law, rule, and written directives. All departments shall distribute the appropriate COBRA election materials to eligible enrolled employees and dependents losing coverage as defined in law and regulations, rules, and written directives.

Medicare

11-27. Employees and dependents of active employees reaching age 65 must follow the criteria as defined in regulations, statutes, and written directives.

Conversion To Non-Group Coverage

11-28. Upon termination of enrollment in certain state group benefit plans, employees or their dependents may convert from a group plan to a non-group plan as defined in law and regulations, rule, plan documents, group master contracts, and written directives.

Complaint And Appeal Procedures

11-29. Complaints and appeals concerning eligibility for state group benefit plans must be submitted in writing to the Director within 20 days of the ineligibility decision. Refer to the Director's dispute resolution processes section of the "Dispute Resolution" chapter for the mailing address. The Director will issue a final decision in writing within 45 days of receipt of the complaint or appeal.

11-30. The resolution of complaints and appeals concerning claims under those state group benefit plans that are regulated by the State of Colorado Division of Insurance (fully insured) must follow that group benefit plan's complaint and appeal review process.

11-31. Complaints and appeals concerning claims under those state group benefit plans that are not regulated by the State of Colorado Division of Insurance (self-funded) must be submitted in writing to the third party administrator (refer to the plan document for address) within 60 days of the action. The administrator will issue a final written decision in accordance with its process.

11-32. Complaints and appeals concerning claims under the state's flexible spending accounts must be submitted in writing to the Director within 60 days of action. Refer to the Director's dispute resolution processes section of the "Dispute Resolution" chapter for the mailing address. The Director will issue a final written decision within 90 days from receipt of the complaint or appeal.

Employee Assistance Program

11-33. Services Provided. The Colorado State Employee Assistance Program (CSEAP) is intended to address workplace issues and personal problems created by or associated with those workplace issues faced by state employees and employers, which may include but are not limited to counseling services, crisis intervention, consultations with supervisors and managers, facilitated groups, trainings and workshops.

11-34. Eligibility Guidelines. Any state employee and any department may participate in the program.

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.

11-35. Funding Sources. The program shall be funded by the state group benefit plans reserve fund, the risk management fund, or both, and any interest derived from the investment of said funds.