

TECHNICAL GUIDANCE – REMOVAL OF NAMES

Prepared by the Division of Human Resources in the Department of Personnel & Administration. Revised August 15, 2013.

GENERAL

As the selection process proceeds for a particular position or class of positions, and an eligible list is ultimately created, there are times when it becomes necessary to remove an individual from the process or eligible list. Director's Administrative Procedure (Rule) 4-28 allows departments to remove an individual from consideration for a vacancy or from an employment list, and identifies acceptable reasons for such removal. The facts considered in deciding whether or not to remove an individual from consideration or from an employment list(s) must be documented and maintained in the official examination file. Upon such removal, the agency's human resources (HR) department is required to notify the affected individual in writing of both his removal and his right to request a review of the action in accordance with Rule 8-76.

REASONS FOR MANDATORY REMOVAL FROM ALL EMPLOYMENT LISTS OR FROM CONSIDERATION FOR ALL VACANCIES

Attempts to use bribery

Departments are required to remove individuals who attempt to use bribery to gain an advantage in the selection process. Evidence of such an attempt will often be indirect, such as a written statement from a current employee or an external comparative analysis panel member verifying a verbal attempt to use bribery. Departments are advised to consider the competence of the evidence to support a removal for this reason.

Unauthorized access to examination information

Departments are required to remove individuals who access examination information without authorization. Evidence of such may be direct, such as when an individual is found to be in possession of a copy of questions or an answer key. In other situations, such as when it can be shown that an individual had the opportunity to access examination or comparative analysis information but it cannot be proven that the individual actually accessed the information, departments are advised to consider the competence of the evidence to support a removal for this reason.

False statements or attempts to practice fraud and deception during the selection process

Departments are required to remove individuals who make false statements or attempt to practice fraud and deception during the selection process. This applies in situations such as when individuals falsify job applications in order to exaggerate the amount or nature of work experience, or when candidates cheat on a comparative analysis step during the selection process. Claiming education or licensure that has not been earned, grossly exaggerating experience in examination settings such as during an oral board or on training and experience narratives, providing references who are not who the individual claims they are, or copying another applicant's examination response are some examples of circumstances that call for removal of names for this reason.

In order for information provided by the applicant to be considered false, fraudulent or deceptive, it is expected that such information will surpass the extent of the applicant attempting to cast him

or herself in a favorable light or “put his best foot forward.” For example, to describe lead work experience as supervisory, or to describe supervisory experience as management or leadership, probably does not rise to the criteria for this reason for removal, under general circumstances. These discrepancies might be attributed to semantics or misunderstandings, and could be clarified through further questioning and research. On the other hand, to claim employment as a chief financial officer at a particular large organization when one actually worked as an accounting technician is a clearer example of what is probably an attempt to practice deception.

Such statements or attempts need not be limited to the application part of the selection process. This reason for removal may be applied at any time during the selection process, from application through interview with the appointing authority.

Existence of a written agreement between the individual and the department that the individual will not seek or accept work from the state or department which is removing the individual from the employment list

Personnel Rule contains mandatory removals of individuals from one or all eligible lists if there is an existence of a written agreement between the individual and the department or the state. If a written agreement exists between the individual and the department which includes the state, best practice is to add the agreement to the candidate’s master profile in CO-Jobs.

MANDATORY REMOVAL FROM A SPECIFIC EMPLOYMENT LIST OR FROM CONSIDERATION FOR THE RELEVANT VACANCY

Failure to meet the minimum qualifications

Departments are required to remove individuals who do not meet the announced minimum qualifications for the position from a specific employment list or the relevant vacancy. Generally, these individuals are screened out at the point of application screening. However, there are circumstances when this is not the case. For example, an individual who claims a required college degree and does not have enough experience to substitute for that requirement must submit a transcript as evidence of the degree. This individual may be conditionally accepted into the applicant pool as the HR office proceeds with the selection process. If the individual fails to produce the required transcript by the deadline or by the date of referral, then the individual is assumed not to have the college degree that cannot be substantiated.

There are times when the HR office accepts an application in error and is later made aware of the error. This may occur when the work experience in question is highly specialized, and experience that the HR specialist initially determined as qualifying is later deemed not to be qualifying. In such cases, an individual who is found not to meet the minimum qualifications is removed from consideration from the vacancy or from the eligible list.

DISCRETIONARY REMOVAL FROM ONE OR MORE EMPLOYMENT LISTS OF FROM CONSIDERATION FOR RELEVANT VACANCIES

Violation of state statutes or regulations that affect the ability to perform the job

Departments may discretionarily remove individuals who have violated statutes or regulations related to the job for which they are being removed from consideration. For example, an individual whose personnel file indicates that he or she has violated statutes guiding fiscal rules may be removed from consideration for a Controller position. It is expected that the violation would have been significant and that the department can make a reasonable argument that the violation represents evidence that the individual would be unable to perform the job for which the individual had applied.

No longer interested in or available for employment with the department or state personnel system

Departments may discretionarily remove individuals no longer interested in employment with the department from one or more employment lists. For example, departments have the discretion to remove an individual from consideration from a vacancy or from an eligible list when the individual indicates that she or he is no longer interested in or available for employment with the department. Departments may remove an individual from consideration from all eligible lists within the department when the individual indicates that he or she has secured other employment, or for some other reason no longer wishes to be contacted about employment with the State of Colorado.

Human resource offices are cautioned to be judicious in removing individuals from all employment lists for this reason. A best practice would be for departmental HR staff to notify an affected individual that he or she will be removed from all employment lists within the department and confirm that the individual wants this outcome before removing them from all relevant vacancies. When an individual declines a single job offer, best practice is to remove the individual from only the list from which the job was declined. The individual will still be eligible for other jobs for which he or she is on eligible lists.

Failure to meet the conditions of employment such as physical requirements, background check, or others as set forth in the job announcement

Departments may discretionarily remove an individual from an eligible list when the individual does not meet the conditions of employment as supported by the job analysis and clearly identified on the job announcement. Best practice is to also have supporting policies, such as a Background Check Policy, that outlines the types of conditions that must be met by candidates, and the consequence for failure to meet such conditions. Human resource offices must be prepared to provide the Director of the Department of Personnel & Administration (Director) with the criteria for meeting each condition of employment upon request, and with the particular reason that any given individual failed to meet a condition of employment.

Failure to respond to a referral within the specified time frame as communicated to the individuals referred, or to complete any portion of the interview process

Departments have the discretion to remove an individual from an eligible list if the individual is referred and does not respond to the referral within the identified time frame. Similarly, departments have the discretion to remove an individual from the eligible list in question if the individual fails to report for any portion of the interview process.

Human resource offices are cautioned that the time frame identified for individuals to respond to referral must be reasonable and sufficient. Consideration should be given to such factors as the method used to deliver such notice, holidays that may affect mail delivery or the individual's availability, and the availability of the appointing authority to conduct interviews.

Failure to be appointed after at least three referrals and interviews for vacancies with the same appointing authority, who is removing the person from the employment list, within an 18 month period

Departments have the discretion to remove an individual from an eligible list if the individual is referred and not appointed for three or more vacancies with the same appointing authority. This reason is intended to allow appointing authorities to remove someone who has been given consideration, yet who has not been selected on three occasions. It is also within the spirit of this rule to give individuals who earn a ranking that makes them eligible for referral three distinct opportunities to be considered for employment before being removed from the eligible list.

In order to meet the criteria for this reason for removal, the individual must have been referred and interviewed three times off the eligible list in question to three different vacancies with the same appointing authority within an 18 month period.

To be referred to the same appointing authority does not require that the individual was referred to the same hiring manager. However, it is expected that the appointing authority is within proximity of all three positions so that he or she is able to confirm that the individual in question has been considered and should be removed. To claim that three vacancies are under the same appointing authority by virtue of being within the same statutory department under one Executive Director is not within the spirit of this rule.

To be referred to three vacancies may, in limited applications, apply to the same vacancy. For example, if an individual was interviewed and not selected, then the individual who was selected did not work out and subsequent referrals were issued several weeks later and the individual to be removed was interview two more times and sincerely reconsidered both times, this reason for removal could be applied.

One basic test for using this reason for removal might be to consider if the individual would agree that he or she had three interviews and opportunities for three jobs from the eligible list in question within 18 months. If the answer is yes, then this reason for removal is appropriate.

Documented failure to demonstrate proficiency in a required job-related competency set forth in the announcement

Departments have the discretion to remove an individual from an eligible list if documentation exists of a failure to demonstrate proficiency in a job-related competency. This removal applies when such competency is identified and supported by job analysis and listed on the job announcement.

The primary application of this reason for removal provides hiring authorities the opportunity to utilize information obtained in the employment interview in managing the eligible list. For example, it is nearly impossible for all required competencies to be assessed in the selection process that results in the rank ordered eligible list. Often, the selection process leading to the establishment of the eligible list assesses the most important, or the most reliably assessed competencies, and relies on hiring managers to use the interview to glean information on remaining job requirements.

An example might be a job that requires interpersonal skills as supported by job analysis and identified on the job announcement. If HR measures different, possibly technical competencies in the competitive process, and these assessments are conducted in a paper-and-pencil format, then it can be concluded that interpersonal skills have not been assessed prior to the interview. When the hiring authority receives the referral list and conducts interviews, he or she may discover a candidate whose interpersonal skills are abrasive or are so lacking that the hiring authority realizes the candidate is not sufficiently proficient in this competency to warrant further consideration. Based on the hiring authority's documentation and substantiation of the deficiency, the individual may be removed from the employment list under this reason for removal.

Human resource offices are cautioned that removals for this reason must be sufficiently documented and substantiated. The quality of the documentation and evidence of job-relatedness are crucial for defending a removal for this reason.

Documentation of unsatisfactory performance indicating an inability to perform in an area directly related to the job

Departments have the discretion to remove an individual from a vacancy or from an eligible list when the individual has a record of unsatisfactory performance. Documentation of unsatisfactory performance is a substantiated set of facts that indicates an individual is unsuitable for the job in question in an area directly related to the job. An example of an appropriate use of this reason for removal might include previous disciplinary terminations from state departments from positions that are highly similar or directly related to the position in question. Another example might be performance evaluations in a state employee's personnel file covering many years of state employment that are characterized by multiple "needs improvement" in a competency or measurement directly related to the job and multiple corrective actions and disciplinary actions, the sum of which reflects little or no sign of improvement in performance over the years.

In order to remove an individual for this reason, the supporting documentation must consist of more than a simple indication of unsatisfactory performance. For example, many individuals throughout their work careers may encounter rough patches where performance was

unsatisfactory and rated “needs improvement”; however, this should not necessarily mandate that all such individuals are to be removed from consideration or from employment lists. Similarly, one negative employment reference may not be enough to remove an individual for this reason, particularly if all other references are favorable.

When applying this reason for removal, departments must keep in mind the spirit of the Colorado Constitution’s requirement for fair and open competition. In the spirit of state rules and laws, individuals are allowed to compete, and through fair competition, the best candidates are ranked and referred for interview. An individual who has floundered over the years who has overcome relevant deficiencies should generally be allowed to compete. Fair competition and a valid employment comparative analysis will ensure that individuals without the relative degree of competencies needed for entry level will not proceed, yet allow those individuals who have overcome deficiencies and are prepared for new challenges that opportunity.

Appointed to a position in the class for which the list was established

Departments have the discretion to remove an individual from other eligible lists within the department upon the individual being appointed to a position in the class for which the list was established. In practice, this essentially means if an individual is removed from other eligible lists other than the one in which she or he is appointed, the department is required to notify the individual of their removal of consideration from those lists.

Refusal of an appointment or conditions previously indicated as acceptable

Departments have the discretion to remove an individual from consideration from an eligible list when the individual declines a job offer or indicates that conditions previously indicated as acceptable, such as those presented on the job announcement, are not acceptable. An example would be an individual applying for a job that requires evening work hours that were identified on the job announcement, then indicating upon interview that he or she is not available to work evenings. Similarly, declining a job offer is refusal of an appointment.

DIRECTOR’S DISCRETION

A department may request in writing that the Director allow the removal of an individual from consideration or from an employment list(s) for a reason which the department deems to be valid but is not stated in the rules. A department may also request in writing that the Director allow the replacement of an individual on an employment list after removal. These requests may be submitted to the Consulting Services unit of the Division of Human Resources at the Department of Personnel & Administration.

NOTIFICATION INFORMATION

The following information must be included in the written notice of removal:

- Name
- Address
- Job Title, Position Number or Registration Number
- Reason for removal
- Agency taking action

Sample letters are provided in Attachment A, B and C for several of the more common reasons for removing an individual's name from an employment list. These letters are only a guide and must be tailored to individual circumstances. A letter is also available in the CO-Jobs system that contains the information listed above.

Every attempt is made to keep this information updated. For additional information, refer to the *State Personnel Board Rules and Director's Administrative Procedures* (rules) or contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the law and rule are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

TABLE 1

**REMOVAL OF NAME FROM EMPLOYMENT LISTS(S) and/or
CONSIDERATION FOR A VACANCY**

REMOVAL REASON	MUST NOTIFY (4-5)
Reasonable cause approved by the Director ¹	✓
Attempts to use bribery	✓
Unauthorized access to examination information	✓
False statements or attempts to practice fraud and deception during selection process	✓
Existence of a written agreement between the individual and a department that the individual will not seek or accept work from the state	✓
Does not meet minimum qualifications	✓
Existence of a written agreement between the individual and a department that the individual will not seek or accept work from the department which is removing the individual from the employment list	✓
Violation of federal or state law that affect the ability to perform the job	✓
No longer interested in or available for employment with the department or the state personnel system	✓
Failure to meet conditions of employment such as physical requirements, background check, or others as set forth in the job announcement	✓
Failure to respond to a referral within the specified time frame as communicated to the individuals referred	✓
Failure to complete any portion of the interview process	✓
Failure to be appointed after at least three referrals and interviews for vacancies with the same appointing authority within an 18 month period	✓
Documented failure to demonstrate proficiency in a required job-related competency set forth in the job announcement	✓
Documentation of unsatisfactory performance indicating an inability to perform in an area directly related to the job	✓
Appointment to a position in the class for which a list was established	✓
Refusal of an appointment	✓
Refusal of condition(s) where previously indicated acceptable	✓

¹Written request must be made to the Director of Department of Personnel & Administration and approved before removal for “Director’s Cause”.

ATTACHMENT A

Sample Letter: Removal of Name from **One** List

Removal Reason: Referral & Interview for Three or More Vacancies

Date

Name

Address

Address

Dear *Name*:

Thank you for your interest in the _____ (classification) _____ positions with the (department) _____, exam number _____ .

We appreciate your time and effort in the selection process for these positions. At this time, you have been referred and interviewed three times from this employment list and the hiring authority has chosen not to select you for these vacancies. When this occurs, it is our policy to remove the applicant from further consideration on that particular employment list. This will not affect your future employment opportunities with the State and we encourage you to continue to apply for positions for which you are qualified and interested.

You may contact _____ (name) _____, Human Resources Specialist, at (number) _____, within 5 (calendar) days of receipt of this letter for further clarification.

We wish you the best in your employment search.

Respectfully,

Human Resources Specialist

ATTACHMENT C

Sample Letter: Removal of Name from All Lists

Date

Name

Address

Address

Dear *Name*:

Thank you for interest in employment with the State of Colorado. Your name is being removed from consideration for employment with State of Colorado for the following reason:

(CHOOSE FROM THE OPTIONS BELOW AND DELETE OTHERS. PROVIDE SPECIFIC DETAILS TO THE EXTENT NECESSARY FOR THE APPLICANT TO UNDERSTAND THE CIRCUMSTANCES.)

- Reasonable cause as determined by the Director (*include specific details*)
- Attempts to use bribery
- Unauthorized access to examination information/material
- False statements or attempt to practice fraud and deception during the application process
- Evidence of a written agreement between you and this Department that you will not seek or accept work from the state

You may contact _____ (*name*), Human Resources Specialist with the (*department*) _____, at _____ (*number*), within 5 (calendar) days of receipt of this letter for further clarification.

Respectfully,

Human Resources Specialist

**TECHNICAL GUIDANCE
DHR APPROVAL FOR PUBLICATION**

This signature page is required for new technical guidance or when major policy revisions are made resulting from changes in law, rule, directives, or official interpretation. As of March 1, 2009, new signatures are not required for non-substantive revisions resulting from correction of errors (e.g., typographical or grammatical), or updating factual information (e.g., minimum wage, statute or rule cites) or illustrative samples. Readers should always check the date on the first page to ensure they are using the most current version.

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