

CHAPTER 130. CIVIL SERVICE AND HUMAN CAPITAL MODERNIZATION RULES

SUBCHAPTER 1. GENERAL PROVISIONS

260:130-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning:

"Act" means the Oklahoma Civil Service and Human Capital Modernization Act.

"Action" or **"disciplinary action"** means issuing a written reprimand, punitively transferring an employee, suspending an employee without pay, involuntarily demoting an employee, or terminating an employee. The action is taken by providing a document in person that specifically states the type of action taken against the employee. In the event the Appointing Authority is unable to provide the document to the employee in person, the Appointing Authority may utilize acceptable electronic means, and the action will be complete upon receipt by the employee.

"Action occurred" means the date the action was taken.

"Administrative Law Judge" or **"ALJ"** means a person appointed by the Civil Service Division and empowered to preside over preheating conferences and hearings with power to administer oaths, take testimony, rule on questions of evidence and make final decisions. All ALJs shall be licensed to practice law in the State of Oklahoma and in good standing with the Oklahoma Bar Association.

"Administrative Procedures Act" or **"APA"** means the Oklahoma Administrative Procedures Act set forth at Section 250 et seq. of Title 75 of the Oklahoma Statutes.

"Administrator" means the Director of the Office of Management and Enterprise Services. As the term is used in the Civil Service and Human Capital Modernization Rules, the term includes employees and the Administrator of Human Capital Management of the Office of Management and Enterprise Services to whom the Administrator has lawfully delegated authority to act on his or her behalf.

"Affidavit" means a sworn written statement, made voluntarily, and taken before a person with authority to administer an oath or affirmation.

"Affidavit of service" means a sworn written statement certifying that a motion, request or other document has been provided to other persons.

"Agency" means any office, department, board, commission or institution of the executive branch of state government.

"ALJ bench review" means an informal process, agreed to by the parties, in which an ALJ 1) review statements, documents, briefs, and other evidence or other materials as permitted under the APA; and 2) issues an informal disposition of the matter without a hearing. Each party may submit documents, statements, citations to legal authority, and briefs in support of their legal position.

"Allegation" means the claims of a party.

"Allege" means to state, assert or charge; to make an allegation.

"Allocation" or **"Position allocation"** means the process by which a position is assigned to an established job profile. A position is allocated on the basis of duties, authority, responsibilities, and other appropriate factors.

"Appointing Authority" means the chief administrative officer of an agency. As the term is used in the Rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.

"Burden of proof" means the obligation of a party to establish alleged fact(s) by a preponderance of evidence.

"Civil Service Division" means the division within Human Capital Management that is responsible for receiving and hearing complaints as described in the Civil Service and Human Capital Modernization Act set forth at Section 34.301 of Title 62 of the Oklahoma Statutes.

"Civil Service Division Director" means the person designated by Human Capital Management to take action on behalf of the Civil Service Division.

"Complainant" means the state employee filing the complaint.

"Complaint" means, as a verb, the filing of a complaint petition, or as a noun, the procedure that takes place after a complaint petition is filed.

"Consolidation" means the combining of complaints containing the same or similar issues but filed by two (2) or more complainants into a single complaint.

"Continuance" means a postponement of a matter scheduled by Human Capital Management or the mediator to a date certain.

"Demotion" means the reduction in salary of an employee with or without a change in job profile. Demotion may be voluntary or involuntary.

"Deny" means to refuse to grant or accept.

"Disciplinary file" means the record of all disciplinary actions leading up to a written reprimand, punitive transfer, suspension without pay demotion, or termination, the final action taken, and all relevant supporting documents.

"Discrimination" means an act or method of discriminating against an employee because of the person's race, color, religion, sex, national origin, age, disability or genetic information.

"Dismiss" means to close without further consideration.

"Disciplinary file" means the record of all disciplinary actions leading up to a written reprimand, punitive transfer, suspension without pay, demotion, or termination, the final action taken, and all relevant supporting documents.

"EEOC" means the Equal Employment Opportunity Commission.

"Evidence" means relevant documents or testimony offered to prove or disprove the existence or non-existence of a fact.

"Exempted employee" means an employee to whom the provisions of the Act do not apply. Exempted employees must be designated in the central system of record by the employing executive branch agency. Exempted employees are:

- (A) Persons employed by the Governor, Lieutenant Governor, Oklahoma House of Representatives, Oklahoma State Senate, Legislative Service Bureau, or the Legislative Office of Fiscal Transparency;
- (B) Elected officials;
- (C) Political appointees;
- (D) District attorneys, assistant district attorneys or other employees of the district attorney's office and the District Attorneys Council;
- (E) The state judiciary or persons employed by the state judiciary;
- (F) Not more than five percent (5%) of an agency's employees designated as executive management as determined by the agency director. The number of employees shall be determined by the number of active position identification numbers an agency has;
- (G) Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period;
- (H) Seasonal employees employed to work less than one thousand six hundred (1,600) hours in any twelve-month period;
- (I) Employees in a trial period; or
- (J) State employees whose employment status is otherwise provided by law.

"Exhibit" means items offered as evidence.

"Ex-parte communication" means communications by anyone with an ALJ or the Civil Service Division Director on the merits of a complaint which could affect its outcome.

"File" or "Filing" means submitting a complaint or other documents on the Civil Service Division's on-line filing system, or any acceptable means determined the Civil Service Division or the receipt of documents by the Civil Service Division.

"Grant" means to give or permit.

"Grievance" means a request for relief in an employment matter made by a Law Enforcement Party, or group of Law Enforcement Parties, which affects the employee in the areas of promotion, compensation, or work location, and which is subject to control of the Appointing Authority.

"Grievance investigation" means a formal process, performed by an assigned Agency investigator, for gathering information and assessing the validity of an employee's Grievance about their workplace.

"Grievance manager" means an individual designated within an Agency to administer the Agency's process for employee grievances and disputes.

"Hearing" means an open, formal proceeding conducted by an ALJ. The proceeding is to provide each party with an opportunity to present evidence in support of their side of the case. The hearing is governed by the Oklahoma Administrative Procedures Act, Sections 309 through 316 of Title 75 of the Oklahoma Statutes.

"Human Capital Management" or "HCM" means Human Capital Management of the Office of Management and Enterprise Services.

"Initial appointment" or "original appointment" means the act of an Appointing Authority hiring a person for the first time as a state employee.

"Intern" or "Internship" means the position is a short-term, entry-level role that helps the individual gain skills and knowledge in a practical field or area. The position the employee holds is full-time (averages 40 hours per week) or part-time (averages less than 40 hours per week) for a defined period of the internship. The employee must be a student enrolled in institutions of higher education working towards an undergraduate degree, certification by the Oklahoma Department of Career Technology Education, or a graduate degree. An intern is eligible for insurance benefits paid leave, and retirement if working one thousand (1,000) hours or more in a twelve-month period and may be granted paid holidays in accordance with 74 O.S. Section 840-2.20(A) O.) at the Appointing Authority's discretion.

"Job code" means an identifying code that:

- (A) corresponds to a job profile, including, but not limited to, the basic purpose, typical functions performed, and the knowledge, skills, abilities, education, and experience required, and
- (B) does not include FLSA status or pay rate type, and
- (C) identifies the suggested pay range.

"Job family" means:

- (A) jobs which require similar core skills and involve similar work, and
- (B) a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the work to warrant similar treatment as to title, typical functions, knowledge, skills, abilities, education, and experience required.

"Job level" or **"level"** means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience.

"Job profile" means a level in a job family.

"Joinder" means the combining of two (2) or more complaints of one complainant.

"Jurisdiction" means the authority of the Civil Service Division to complete its duties and responsibilities.

"Jurisdictional limitations" means the statutory restrictions on the scope, time limits, and type of appeals which may be considered by the Civil Service Division.

"Law Enforcement Party" means a state employee that is employed to perform duties as outlined in paragraph 6 of subsection E of Section 3311 of Title 70 and Section 2-105 of Title 47 of the Oklahoma Statutes.

"Mediator" means a person who assists and facilitates the parties involved in a complaint to come to a resolution.

"Minimum qualifications" means the requirements of education, training, experience and other basic qualifications for a job.

"Moot" means no longer in dispute because issues have already been decided or when rendered, a decision could not have any practical effect on the existing dispute.

"Motion" means a request for a ruling to be made by a ALJ or the Civil Service Division Director.

"New position" means a position not previously existing.

"Office of Management and Enterprise Services" means the Human Capital Management Division of the Office of Management and Enterprise Services.

"Order" means a command or directive given by an ALJ or the Civil Service Division Director.

"Party" means a complainant or respondent.

"Position" means a group of specific duties, tasks and responsibilities assigned by the Appointing Authority to be performed by one person; a position may be part time or full time, temporary, occupied or vacant.

"Prehearing conference" means a proceeding conducted by an ALJ with the parties to identify the issues, documents, witnesses and motions which will guide the ALJ in the conduct of the hearing.

"Preponderance of evidence" means information or evidence which is more convincing or believable than the information or evidence offered in opposition.

"Punitive transfer" means a transfer that is directed at and affects only one employee employed by the Appointing Authority. A punitive transfer must relocate the affected employee to a new worksite that is fifty (50) or more miles from the employee's previous worksite. A transfer that results from a closure of a worksite location or building or affects two or more employees does not qualify as a punitive transfer.

"Reallocation" or **"Position reallocation"** means the process of reassigning an established position, occupied or vacant, from one job profile to another.

"Reassignment" means the process of changing an employee from one job family to another job family or from one job level to another job level in the same job family, resulting in a change in the employee's assigned job profile.

"Regular and consistent" means, in connection with an employee's work assignments, the employee's usual and normal work assignments, excluding incidental, casual, occasional tasks, and activities the employee assumes without direction to do so. Temporary work assignments of less than sixty (60) days in any twelve (12) month period are not considered regular and consistent.

"Reinstatement" means the reappointment of a former employee and does not trigger the trial period.

"Relevant" means directly related to the issue or issues being examined.

"Remedy" means corrective action sought by or afforded to a party.

"Representative" means the designated attorney of record, who shall be licensed to practice law in the state of Oklahoma identified in the complaint petition or through an entry of appearance or other written means, acting on behalf of a party. An individual other than an attorney licensed to practice law in the state of Oklahoma may act as the representative of the party if approved by the mediator leading the mediation or the ALJ presiding over the hearing or review process.

"Resignation" means an employee's voluntary termination of his or her employment with the state.

"Respondent" or **"Responding agency"** means the state agency which the complaint has been filed against.

"Rules" means the Civil Service and Human Capital Modernization Rules.

"State employee" or **"employee"** means an employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education] in state service afforded the protections under the Act set forth at Section 34.301 of Title 62 of the Oklahoma Statutes and these Rules.

"Stipulation" means a voluntary admission of fact.

"Subpoena" means an order to appear at a certain time and place to give testimony.

"Subpoena Duces Tecum" means an order requiring the production of books, papers and other documents.

"Substantiated" means a finding, by the preponderance of the evidence, that 1) the Agency has violated a law, administrative rule, or Agency policy, in a way, that adversely affects the Law Enforcement Party; and 2) the Law Enforcement Party may be entitled to an appropriate remedy.

"Supervisor" means an employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education] who has been assigned authority and responsibility for evaluating the performance of other state employees.

"Sustain" means to grant a request; to grant a complaint.

"Testimony" means statements given by a witness under oath or affirmation.

"Trial period" means a working test period lasting for a period of one year following the initial hiring of a state employee into state service, the hiring of an employee who is transferring from one state agency to another state agency, or the hiring of an employee returning to state service following a break in service. The Appointing Authority has the authority to waive the trial period at any time at their discretion.

"Unsubstantiated" means the Law Enforcement Party has failed to prove that 1) the Agency has violated a law, administrative rule, or Agency policy, in a way that adversely affects the Law Enforcement Party; and 2) the Law Enforcement Party may be entitled to an appropriate remedy.

"Veteran" means any person who served the full obligation for active duty, reserves or National Guard service in the military, or received an early discharge for a medical condition, hardship or reduction in force; and has been separated or discharged from such service honorably or under honorable conditions.

SUBCHAPTER 3. STATE EMPLOYEE DISPUTE RESOLUTION PROGRAM

260:130-3-1. Purpose, use and scope of State Employee Dispute Resolution Program

(a) **General.** The Civil Service Division shall establish and maintain a State Employee Dispute Resolution Program, which may include mediation, to provide dispute resolution services to state agencies and state employees [62:34.301(B)(1)]. When the Civil Service Division is contracted with the Early Settlement Mediation Program through the Administrative Office of the Courts, the State Employee Dispute Resolution Program is subject to the laws and protections of the Dispute Resolution Act found at Title 12, Sections 1801-1813 of the Oklahoma Statutes and rules promulgated thereunder.

(b) **Purpose.** The purpose of the State Employee Dispute Resolution Program is to provide an economical means and access to effective alternative dispute resolution services to all state agencies and state employees. The State Employee Dispute Resolution Program affords the parties to a complaint the same equity and impartiality as the hearing process while offering faster, less costly and more flexible ways to resolve disputes.

(c) **Use and Scope.** Complaints relating to written reprimands shall only be administered through mediation. If mediation is unsuccessful, written reprimands involving a Law Enforcement Party, may proceed to a hearing or, upon election of the parties, to an ALJ bench review. Complaints relating to punitive transfer must first go through mediation before proceeding to a hearing if the mediation is unsuccessful. Mediation may also be available for suspensions without pay, involuntary demotions, and terminations.

260:130-3-3. State Employee Dispute Resolution Program Mediators

The Civil Service Division shall be responsible for offering mediation training and certifying all mediators available through the State Employee Dispute Resolution Program. The Civil Service Division will maintain a list of all available mediators. Mediators will be state employees who have completed the Civil Service Division-approved program and applied to the Civil Service Division to be mediators within this program. State employees will not receive additional compensation for working as mediators. Serving as a mediator will be included within the employees' job duties. An employee must have had satisfactory performance ratings, must obtain written approval from his or her supervisor before applying to be a mediator, and submit such approval with his or her application. In the event the Civil Service Division does not have an adequate pool of mediators to assign to complaints and ensure the complaints are mediated within enough time to either resolve the complaint or have the hearing take place within the thirty (30) business day requirement set forth in 62 O.S. Section 34.301, the Civil Service Division may utilize other methods of obtaining mediators. For Law Enforcement Parties, the Civil Service Division will have complaint related mediations completed within thirty (30) business days of submission of the complaint.

SUBCHAPTER 5. JURISDICTION, RIGHTS AND PROCESSES

260:130-5-2. Time

(a) Complaints shall be filed with the Civil Service Division within ten (10) business days of the date of when the termination, suspension without pay, involuntary demotion, written reprimand, or punitive transfer occurred. The action occurs when the employee receives the written notice of the disciplinary action either in person or via acceptable electronic means. Hearings shall take place within thirty (30) business days from the filing of the complaint.

(b) Law Enforcement Parties shall file their complaints with the Civil Service Division within twenty (20) business days of the disciplinary action. The Civil Service Division will have complaint related mediations involving Law Enforcement Parties completed within thirty (30) business days of submission of the complaint. The Civil Service Division will hear complaint related hearings involving Law Enforcement Parties within sixty (60) business days of submission of the complaint. The Civil Service Division may grant one thirty (30) day extension for mediation for Law Enforcement Parties upon request of one of the parties.

260:130-5-3. Jurisdiction

The Civil Service Division's jurisdiction to assign cases to hearing or review by the ALJ is limited to complaints arising from termination, suspension without pay, involuntary demotion, and punitive transfer. The review of the merits of the complaint ~~shall may~~ be limited to the employee disciplinary file directly at issue [62:34.301(D)]. The Civil Service Division will accept complaints arising from written reprimand and punitive transfer and will assign such complaints to mediation.

260:130-5-12. Motions and requests

Oral motions may be made during a prehearing conference or hearing. All other motions and requests shall be filed in writing and shall state the reason for the motion or request and shall include an affidavit of service to all other parties. Any response to a motion or request shall be filed within the time frame set by the ALJ at the prehearing conference. The ALJ shall ensure that the time frame set for the filing of motions, requests, and responses does not extend past the thirty (30) business day limit as set forth in Section 62 O.S. Section 34.301(C). For Law Enforcement Parties, the ALJ shall complete the hearing within sixty (60) business days from the filing of the complaint.

260:130-5-13. Continuances

A request for continuance shall be filed in writing and shall include the cause for the request and a statement of agreement or disagreement by the other party(s). A prehearing conference or hearing may be continued or adjourned by the Civil Service Division or the ALJ. A continuance shall be granted only in those instances where extraordinary circumstances exist and have been shown. If granted, a continuance shall be made to a date certain. A request for continuance that extends the hearing or mediation past the thirty (30) business day limit as set forth in 62 O.S. Section 34.301(C) will not be granted. For Law Enforcement Parties, the ALJ shall complete the hearing within sixty (60) business days from the filing of the complaint. The Civil Service Division may grant "one" extension of up to thirty (30) calendar days upon request of one of the parties involved in a Law Enforcement Party complaint. The Civil Service Division may grant another extension of up to thirty (30) calendar days if necessary.

(1) If granted on behalf of the Civil Service Division or the responding agency, and the complainant is subsequently sustained in the complaint, back pay and other benefits shall be awarded for the entire judgment as determined appropriate by the ALJ.

(2) If granted on behalf of the complainant and he or she is subsequently sustained in the complaint, back pay and other benefits shall be awarded only for the period of time that the complainant did not delay the complaint as determined appropriate by the ALJ.

SUBCHAPTER 7. HEARING PROCESS

260:130-7-4. Hearing

(a) **Purpose.** The hearing provides each party the opportunity to present witnesses and evidence as allowed by these Rules in support of his or her respective case for decision by an ALJ. Hearings shall be conducted in accordance with the Act, the Administrative Procedures Act and the Rules in this chapter.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Complainant's failure to do so may result in dismissal of the complaint unless extraordinary circumstances exist and are shown.

(c) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, to speak and act on his or her behalf.

(d) **ALJ responsibility.** The ALJ shall rule on questions of admissibility of evidence, competency of witnesses and any other matters or questions of law.

(e) **Process.** The hearing shall be formal, structured by the ALJ and open to the public. Parts of a hearing may be ordered closed when evidence of a confidential nature is to be introduced or where to do so would be in the best interests of a party, witness, the public or other affected persons. The ALJ shall record the hearing by digital recording and such recording shall constitute the official recording of the hearing.

(1) **Notice.** Each party shall be notified of the date, time and location at least seven (7) calendar days prior to the scheduled hearing.

(2) **Location.** The hearing shall be held at the Civil Service Division offices or any other location determined appropriate. At the prehearing conference any party may request the hearing be changed to a more convenient location. The ALJ shall rule on the request and may change the location when to do so is in the best interests of the Civil Service Division and parties.

(3) **Witnesses.** The ALJ shall administer an oath or affirmation to each witness.

(4) **Continuance.** A request for continuance shall be filed in accordance with OAC 260:1305-13 no less than three (3) calendar days prior to the scheduled hearing. The ALJ, or in his or her absence, the Civil Service Division, shall rule on the request in accordance with OAC 260:130-5-13.

(f) **Witnesses allowed at the hearing.** The witnesses allowed at the hearing shall be limited to

(1) the Human Resources Director or designee;

(2) the supervisor;

(3) the employee bringing the complaint;

(4) additional witnesses approved by the ALJ, as requested by filing a formal motion for a subpoena to be issued. If the requested witness has direct knowledge of the facts at issue and the witness testimony would be relevant to proving or disproving the existence or non-existence of a fact of the case, the ALJ shall issue a subpoena for that witness' appearance. However, the ALJ shall retain the authority over which witness will be allowed to appear and testify.

(g) **Documents allowed at the hearing.** The documents allowed at the hearing shall be limited to the documents contained in the disciplinary file. The ALJ has discretion upon request by a party, to issue a subpoena duces tecum for production additional documents if they are not maintained in the Disciplinary file, if the documents are associated with the issues in dispute, and are relevant to proving or disproving the existence or non-existence of a fact of the case.

(h) **Burden of proof.** The following burden of proof shall apply to all hearings under the jurisdiction of the Civil Service Division (termination, involuntary demotion, suspension without pay, or punitive transfer). The burden of proof shall be upon the complainant who must prove his or her case by a preponderance of the evidence that there was no reasonable basis for the disciplinary action by the state agency.

(1) If the Complainant fails to prove that there was no reasonable basis for the disciplinary action by the state agency, the ALJ shall dismiss the complaint;

(2) If the Complainant proves that there was no reasonable basis for the disciplinary action by the state agency, an ALJ may order the reinstatement of the employee, with or without back pay and other benefits. An ALJ may also order that documentation of the disciplinary action be expunged from any and all of the employee's personnel records and disciplinary file.

(3) Upon a finding that a reasonable basis existed for a disciplinary action, but did not exist for the severity of the discipline imposed or progressive discipline standards were not properly followed, an ALJ may order reduction of the discipline to a lower level of progressive discipline.

(4) An ALJ who orders reinstatement with back pay and other benefits under (2) above, may consider the deduction of any income the employee may have received for the period of time the employee was not performing his or her duties.

260:130-7-5. Methods of testimony

(a) This section shall not limit the authority of the Civil Service Division to compel witnesses by subpoena as allowed by these Rules to appear and offer testimony. Upon written request and approval by the ALJ, an affidavit, video conference, electronic communication, and telephone communication may be used when a witness or party is unable to attend or testify because of good reason.

(b) The parties to any action before the Civil Service Division are responsible for ensuring that the technology is available to all participants for conducting a video conference.

SUBCHAPTER 19. EMPLOYEE ACTIONS

PART 1. GENERAL PROVISIONS

260:130-19-6. Method of resignation

(a) To resign in good standing, an employee must give the Appointing Authority, or designee, at least fourteen (14) calendar days prior notice unless the Appointing Authority, or designee, agrees in writing to permit a shorter period of notice. The Appointing Authority, or designee, will supply the employee written confirmation of any shorter period of notice that is allowed.

(b) Verbal resignations may be accepted by the Appointing Authority and implemented at his/her discretion.

(c) An employee who is absent from work without prior approval and who has not contacted his/her supervisor or agency representative within ~~three~~two (2) working days is deemed to have resigned from state service.

SUBCHAPTER 23. OFFICE OF VETERANS PLACEMENT

260:130-23-1. Office of Veterans Placement

- (a) The Office of Veterans Placement is created within Human Capital Management of the Office of Management and Enterprise Services. Services of the Office of Veterans Placement shall include employment counseling, assistance in identifying transferable military skills, qualifications and career assessment, assistance in drafting competitive resumes, instruction in developing comprehensive job search strategies and job placement assistance.
- (b) Veterans who utilize the Office of Veterans Placement shall be guaranteed a reasonable offer of an interview for qualifying state service positions.
- (1) Questions regarding reasonable interview offers will be reviewed by the Office of Veterans Placement. Such veterans will only be granted an interview for those jobs that the Office of Veterans Placement have determined to be an appropriate match for each veteran.
 - (2) The veteran will be required to present a letter from Oklahoma's Office of Veterans Placement to the hiring agency evidencing this requirement.
 - (3) If an agency has interviewed a qualified program participant twice in the last twelve (12) months (as determined by application dates) for the same job title and determined that the veteran is not a good fit for the job, they may decline to interview them again for the same job title.
 - (4) Program eligible veteran complaints regarding an agency's hiring practices will be reviewed by the Office of Veterans Placement. After attempting to resolve these complaints at the lowest level possible, the complaints will be sent to that agency's human resources director, with a copy sent to the agency director, for review.
- (c) This section shall not apply to special disabled veterans who are considered for employment under the provisions of Sections 401 through 404 of Title 72 of the Oklahoma Statutes. Provided, said veterans may elect instead to be considered for employment according to the procedures set out in this section.

SUBCHAPTER 27. DISCIPLINARY ACTIONS

260:130-27-5. Progressive Discipline standards

The Civil Service Division shall establish and maintain standards of progressive discipline that shall be followed by all Appointing Authorities unless the Appointing Authority has received an exemption from the Civil Service Division from the standards. In order to request an exemption from the standards, the Appointing Authority must provide the Civil Service Division with a progressive discipline plan the Appointing Authority will follow in lieu of the standards. The Civil Service Division will review the exemption request and notify the requesting Appointing Authority in writing whether the request has been approved or denied. The standards can be found on the website maintained by the Civil Service Division. The progressive discipline standards shall not be required for employee separations that occur as a result of voluntary buy outs or reductions-in-force as set forth in the applicable Oklahoma statutes. Further, for instances of discipline resulting from acts that may include but are not limited to, creating an unsafe working environment for others, causing issues of threats to physical safety or could create a danger to citizens, the Appointing Authority may proceed to highest step of discipline.

SUBCHAPTER 31. GRIEVANCE PROVISIONS

260:130-31-1. Purpose

The rules in this Subchapter shall be limited only, to state employees employed to perform duties as outlined in paragraph 6 of subsection E of Section 3311 of Title 70 and Section 2-105 of Title 47 of the Oklahoma Statutes, which are referred to in this Chapter as Law Enforcement Parties, and Agencies that employ those state employees.

260:130-31-2. Informal Discussion between Law Enforcement Party & Supervisor discussion between Law Enforcement Party & supervisor

- (a) Before filing a Grievance with the Civil Service Division or Agency, the Law Enforcement Party must notify his or her immediate supervisor or the grievance manager of a Grievance. A Law Enforcement Party must initiate the informal discussion within twenty (20) calendar days of when the Law Enforcement Party knew, or with reasonable effort should have known, of the act complained of.
- (b) It is the responsibility of the Law Enforcement Party, and immediate supervisor or grievance manager to attempt to find resolution. If the grievance is resolved during the informal discussion process, the supervisor and employee will memorialize in writing, and the grievance resolution process is ended. The grievance manager may act in place of the supervisor if necessary.

260:130-31-3. Agency: Grievance Procedures

(a) The Appointing authority shall file a copy of any adopted resolution procedures, including revisions, with the Civil Service Division. Any adopted Grievance resolution procedure shall include a general statement certifying that the procedure contains minimum requirements which:

- (1) encourage resolution of disputes within the agency quickly, informally, and at the lowest possible level;
- (2) require prompt resolution of grievances within established time periods; and
- (3) guarantee the employee the right to be represented by person of his or her own choosing at each step of the procedure, except the initial informal discussion with his or her immediate supervisor;
- (4) reflect the contact information of the Grievance Manager.

(b) The Appointing Authority shall:

- (1) furnish to each eligible employee a copy of the internal agency grievance resolution procedure, including revisions, used by the agency,
- (2) designate an employee or employees within the agency to receive and process formal grievances. If the Appointing Authority does not designate such employee(s), the Appointing Authority shall be the Grievance manager;

(c) If an Agency has Grievance resolution procedures, then the Law Enforcement Party shall file directly with the Agency per the adopted resolution procedures. The procedures must provide that the Appointing Authority will issue a final decision to Substantiate or Unsubstantiate the Grievance within seventy-five (75) business days of the filing of the Grievance.

(d) After filing a formal grievance, an employee may file an appeal to the Civil Service Division utilizing the online filing system within 10 business days after:

- (1) expiration of the resolution time, including any extension, and a resolution decision has not been received;
- (2) Receiving a resolution decision and the employee can provide evidence the resolution decision was not correct, did not address the issues of the grievance or that violations occurred during the processing of the formal grievance.

(e) An employee may file an appeal before the agency grievance procedure is concluded if the employee can provide evidence that violations of the agency grievance procedure are occurring or if the employee can provide evidence that the alleged violations are continuing.

(f) The issues of the appeal shall be limited to those raised in the formal Grievance or discovered during the internal agency grievance process over which the Civil Service Division has jurisdiction.

260:130-31-4. Online Filing System for Uniform provisions regarding Grievances

(a) Every Appointing Authority must designate an agency representative(s) to receive notice of Grievances filed. The Appointing Authority or designee shall be responsible for keeping the Civil Service Division informed of the current agency representative and his or her up-to-date contact information. Once a Law Enforcement Party has filed a Grievance or an appeal of a Grievance under OAC 260:130-31-3, then the Civil Service Division shall provide notice to the Agency's agency representative. Each Appointing Authority shall prominently display a notice reflecting the contact information of the employee(s) designated to receive and process formal Grievances. Such notices shall be displayed in locations or via a method where they can reasonably be expected to come to the attention of employees.

(b) Filing Time.

(1) A formal Grievance shall be filed:

(A) within 45 business days of the date of the act or incident; or

(B) within 45 business days of the date the employee knew or, with reasonable effort, should have known of a grievance issue. Notwithstanding the foregoing, a Grievance must be filed within one (1) year of the date of the act or incident.

(2) The Civil Service Division or the Agency may extend the time limit for filing a formal Grievance if the employee shows that he or she could not have otherwise timely filed as identified in (b)(1)(B) or if the employee provides evidence that he or she was making a good faith effort to resolve the dispute informally. All Grievances shall be filed within one (1) year of the date of the act or incident. The decision to extend the filing time shall not automatically give jurisdiction of the issues in dispute to the Civil Service Division.

(c) No employee shall be disciplined or otherwise prejudiced in his or her employment for exercising his or her rights under the Grievance resolution procedures.

260:130-31-5. Agency Without Agency Grievance Procedures without Agency Grievance procedures

The following rule shall apply only to those agencies that have not adopted a grievance procedure as provided for in OAC 260:130-31-3:

(1) If a state employee desires to file a formal Grievance, then said employee must do so by 1) using Civil Service Division's online filing system; and 2) filing the form prescribed by the Civil Service Division. The process for filing will be published on the website maintained by the Civil Service Division.

(2) Investigation responsibilities include:

(A) After the Civil Service Division has received notification of the Grievance from the Law Enforcement party, then the Civil Service Division shall contact the Agency that employs the Law Enforcement Party.

(B) The Agency will be responsible for performing a review and a Grievance Investigation of the filed Grievance as outlined in OAC 260:130-11-5.

(C) The Agency shall ensure that its investigation process includes, but is not limited to the following steps:

(i) escalation to higher management, and

(ii) a referral to mediation if necessary.

(D) The Agency's investigatory role is to determine whether the Law Enforcement Party's claim(s) shall be Substantiated or Unsubstantiated.

(3) Declination of Grievance Investigation.

(A) A Grievance Investigation may be required depending on the Grievance filed by a Law Enforcement Party. However, Agencies will be allowed to decline performing a formal investigation of a Grievance.

(B) After a Law Enforcement Party has filed a Grievance, an Agency will have ten (10) business days to:

(i) begin its Grievance Investigation; or

(ii) review, sign, and provide Civil Service Division and the Law Enforcement Party with a copy of the form prescribed by the Civil Service Division.

(C) If an Agency declines to conduct a Grievance Investigation, then the Law Enforcement Party will be allowed to appeal Civil Service Division complaint process (Mediation & ALJ Hearing).

(4) To initiate this appeal, the Law Enforcement Party must submit the proper form prescribed by the Civil Service Division to the Civil Service Division's online filing system within ten (10) business days of the date listed in the Agency's notice. If the appeal form is not filed timely, then the Civil Service Division will dismiss and close the Grievance appeal. No exceptions will be made.

(5) Grievance rules & responsibilities.

(A) If a Grievance is filed and an Agency elects to perform a Grievance Investigation, both parties (the Agency and Law Enforcement Party) will be responsible for their own compliance with the rules set forth below. The Agency review and Grievance Investigation of a filed Grievance shall include the following standards of review to determine whether a violation within the Civil Service Division's jurisdiction may have occurred:

(i) the applicable or relevant law or statute;

(ii) the applicable rule;

(iii) the applicable Agency rule, policy, procedure or practice; and

(iv) review for consistent or uniform application, as appropriate.

(B) Investigation Period: A Grievance Investigation should begin no later than ten (10) business days after a Law Enforcement Party has filed a Grievance. The Agency review and Grievance Investigation of a filed Grievance shall take no longer than forty-five (45) business days to complete.

(C) Investigative Report: An investigative report of the Agency's Grievance Investigation shall be attached to the prescribed form and include a summary of the findings of fact and a recommendation for the disposition of the Law Enforcement Party's Grievance claim. The report shall be issued within 10 business days of the completion of the investigation report. The report of the investigation to the Appointing Authority shall include, as a minimum:

(i) the name of the person who conducted the investigation;

(ii) a summary of the findings of the investigation;

(iii) a description of how the investigation was conducted;

(iv) a summary of evidence obtained from the investigation;

(v) The report shall also include a reference to persons interviewed and documents used in making the findings of fact.

(D) Any party may file a response to the investigative report with the Appointing Authority and include any additional relevant information to be considered no later than ten (10) business days after receiving the Investigative Report. No exceptions will be allowed. Any party filing a response or providing additional information should provide a copy to all other parties.

(E) The following outlines the Agency's review process for Grievances:

(i) Upon completion of the Grievance Investigation, the Appointing Authority shall have twenty (20) business days of the report to Substantiate or Unsubstantiate the Law Enforcement Party's Grievance claim. The Appointing Authority shall notify Civil Service Division and the Law Enforcement Party via written notice of its decision via the prescribed Civil Service Division form.

(ii) If the Appointing Authority Substantiates the Law Enforcement Party's Grievance, then the Agency shall have ten (10) business days to implement corrective action.

(iii) If the Agency Unsubstantiates the Grievance, then the Law Enforcement Party shall have ten (10) business days to appeal said decision. The Law Enforcement Party must elect to mediate the matter or request an administrative hearing. The Law Enforcement Party must send this notification via the online filing system. The Law Enforcement Party will only need to reopen its pending/original filing entry to send notice via the prescribed form.

(iv) If the Law Enforcement Party fails to appeal the Appointing Authority's decision within the ten (10) business day deadline, then the Civil Service Division shall dismiss and close the Grievance. No exceptions shall be made.

(v) If the Appointing Authority fails to make a decision or fails to notify the Civil Service Division and the Law Enforcement Party of its decision within the ten (10) business day deadline, then the Law Enforcement Party shall be allowed to undergo the appeal process and elect to mediate the matter, have the matter heard at an administrative hearing, or expedite the matter for bench review.

(F) Documents obtained during the course of the Agency's Grievance Investigation shall be maintained in the employee Grievance file, which may be deemed confidential pursuant to Title 51 O.S. § 24A.7(A) (I) of the Oklahoma Statutes. Upon written request to the Agency, a party to the Grievance or their Representative may review the documents in the grievance file and listen to a recording of his or her interview.

260:130-31-6. Grievance Hearingshearings

(a) The parties may agree to voluntarily mediate the Grievance following Subchapter 3: State Employee Dispute Resolution Program before proceeding to a hearing.

(b) All hearings held pursuant to the Civil Service and Human Capital Modernization Act shall be conducted as described in Subchapter 7: Hearing Process.

(1) If the ALJ Substantiates the Grievance then the parties will be ordered to mandatory mediation that is to be completed within ten (10) business days. The ALJ's order for mandatory mediation is not a final order. The goal of the mandatory meditation shall be for the parties to enter into an agreement.

(2) If the parties are unable to resolve the Grievance, then the ALJ shall issue a final order that includes remedies. Said order may be enforced by the Law Enforcement Party through a court of competent jurisdiction.

(3) If the ALJ affirms the Grievance as Unsubstantiated then the order will be a final order, which a party may appeal pursuant to the Administrative Procedures Act.

260:130-31-7. Grievance Jurisdictionjurisdiction

Employees who are Law Enforcement Parties may file in the following limited circumstances, unless otherwise provided by law:

(1) Promotion.

(A) Lack of equal access to career development opportunities and advancement; and

(B) Repeated denial of promotions.

(2) Compensation: Compensation inequity complaints for same job different pay.

(3) Work Location: Lack of location transfer when requested.

260:130-31-8. Grievance Basedbased on Discrimination

If a state employee files a Grievance based on Discrimination, then the Civil Service Division shall defer and direct the Law Enforcement Party to use the services provided by the EEOC. If an Agency discovers that a filed Grievance is based on Discrimination during its Grievance Investigation, then the Agency shall 1) defer and direct the Law Enforcement Party to the use services provided by the EEOC; and 2) provide notice of the decision to the Civil Service Division via written notice.

260:130-31-9. Consolidating Grievances

(a) The Civil Service Division or the Appointing Authority may consolidate formal Grievances containing the same or similar issues filed by two or more employees into a group grievance when to do so will produce a more efficient, more economical or more timely processing and resolution of the Grievances and will not adversely affect the interests of the employees filing the Grievances.

(b) The Civil Service Division or the Appointing Authority may join formal Grievances filed by an employee when doing so will produce a more efficient, more economical or more timely processing and resolution of the Grievances and will not adversely affect the interests of the employee.

(c) Other specific requirements for resolving multiple Grievances may be adopted in an Agency Grievance's resolution procedure.

260:130-31-10. Grievance Recordsrecords

(a) Each Agency shall maintain a record of each formal Grievance filed as well as summary information about the number, nature and outcome of all agency internal Grievances

(b) Agencies shall keep records of internal Grievances in their files.

(c) An employee or former employee shall have a right of access to the agency internal Grievance records of the pertinent Law Enforcement Party he or she filed after the agency internal Grievance process has been completed.

(d) The Civil Service Division, because of its statutory responsibility, shall also have a right of access to Grievance records of the pertinent Law Enforcement Party.