

CHAPTER 8

EXCLUDED EMPLOYEE GRIEVANCE AND APPEAL PROCEDURES

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CHAPTER 8

EXCLUDED EMPLOYEE GRIEVANCE AND APPEAL PROCEDURES

1. PURPOSE. This chapter describes the formalized grievance and appeal procedures for excluded employees.

2. GRIEVANCE AND APPEAL PROCEDURES.
 - a. Intent. These grievance and appeal procedures:
 - (1) Establish a process to assure just and amicable solutions to grievances of employees excluded from collective bargaining.
 - (2) Provide an orderly process for the prompt review and resolution of issues either informally or formally at the lowest possible level.

 - b. Definitions.
 - (1) “Grievance.” An excluded employee grievance is a dispute of one or more employees involving the application or interpretation of a statute, regulation, policy, or practice which falls under the jurisdiction of California Department of Human Resources (CalHR).
 - (2) “State Employer” or “Employer.” The Governor or Governor’s designated representative, in most instances CalHR.
 - (3) “Appointing Power” or “Department Head.” The Commissioner of the CHP.
 - (4) “Immediate Supervisor.” The individual identified by the appointing power who assigns, reviews and directs the work of an employee.
 - (5) “Representative.” An excluded employee organization representative, employee, personal advisor, or legal counsel selected by the aggrieved employee for representational purposes.

 - c. Confidentiality. All employees have the right to confidentiality during the grievance process. Managers and supervisors should remember this when processing and investigating grievances.

- d. Time Limits. Each party involved in a grievance shall act quickly so that the grievance may be resolved promptly. Every effort should be made to complete action within the time limits contained in the grievance procedures.
- e. Extensions. Time limits may be extended to a specified date by mutual agreement of both parties. Extensions shall be confirmed in writing and attached to the grievance and/or response (Annex G of Chapter 7, Guidelines for Grievance/Complaint Handling, of this manual).
- f. Conference. At any step of the grievance procedure, the commander or designee may determine it desirable to hold a grievance conference. If a grievance conference is scheduled, the grievant and their representative, if an employee of this Department, may attend without loss of compensation.
- g. Informal Discussion. The employee or the employee's representative shall discuss the grievance with their immediate supervisor. This discussion must occur within ten work days of the event(s) or circumstance(s) causing the grievance. Within five work days, the immediate supervisor shall render their decision either verbally or in writing. This must be accomplished before a formal grievance can be filed.
- h. Appeal Format.
- (1) A formal grievance shall be initiated in writing on a CHP 94, Employee Grievance/Complaint, and shall be filed with a designated supervisor or manager identified by the appointing power as the first level of appeal.
 - (2) Normally, the levels of appeal for an excluded employee grievance are Area/section commander (Level 1), division commander (Level 2), Office of the Commissioner (Level 3), and the Director of CalHR (Level 4). In those cases where the excluded employee's immediate supervisor is also the Area/section/Division commander, the formal grievance shall initially be filed at the next higher level.
- i. Formal Grievance - Level 1.
- (1) If an informal grievance is not resolved to the satisfaction of the grievant, a formal grievance may be filed no later than:
 - (a) Ten work days after the event or circumstances occasioning the grievance, or
 - (b) Within five work days of the decision rendered in the informal grievance procedure, whichever is later.

Within ten work days after receipt of the formal grievance, the person designated by the Department head as the first level of appeal shall respond in writing to the grievance.

j. Formal Grievance - Level 2.

(1) If the grievant is not satisfied with the decision rendered at Level 1, the grievant may appeal the decision within ten work days after receipt of the response to the person designated by the Department head as the second level of appeal. If the appointing authority or designee is the first level of appeal, the grievant may bypass Level 2.

(2) Within fifteen work days after receipt of the appealed grievance, the person designated by the Department head as the second level of appeal shall respond in writing to the grievance.

k. Formal Grievance - Level 3.

(1) If the grievant is not satisfied with the decision rendered at Level 2, the grievant may appeal the decision within ten work days to the Department head or designee. If the appointing authority or designee is the second level of appeal, the grievant may bypass Level 3.

(2) Within fifteen work days after receipt of the appealed grievance, the person designated by the Department head as the third level of appeal shall respond in writing to the grievance.

l. Formal Grievance - Level 4.

(1) If the grievant is not satisfied with the decision rendered at Level 3, the grievant may appeal the decision within ten work days to the Director of CalHR or their designee. This is the final step of the excluded employee appeal procedure.

(2) Within twenty work days, the Director of CalHR or their designee shall respond in writing to the grievance.

m. Policy Issues. If an excluded employee's immediate commander cannot act upon a grievance because the issue involves departmental policy, it shall be discussed with the employee before further action is taken. If the grievance cannot be resolved by discussion, the commander shall respond by indicating the issue involves departmental policy and cannot be resolved at their level. The employee is then responsible for appealing the grievance to the next level. Commanders are not to forward grievances to the next level on the employee's behalf.

n. Miscellaneous Provisions.

(1) Consolidation. The Department may consolidate grievances that address similar issues at any level.

(2) Withdrawal. A grievant may withdraw a grievance at any time; however, they shall not file a subsequent grievance on the same alleged incident or issue.

(3) Waiver of Steps. The parties may mutually agree to waive any step of the grievance procedure. All waiver agreements should be committed to writing and acknowledged by the parties.

(4) Failure to Specify Violation. Failure of an excluded employee to cite the expressed statute, regulation, policy, or practice violated shall be cause for denial of the grievance.

(5) Reprisal. No one shall use, or threaten to use, any official authority or influence in any manner which would discourage the use of the grievance procedure by excluded employees. Employees using the grievance procedure shall not suffer reprisal for exercising this right.

(6) Reprisal Grievances. Grievances alleging reprisal shall be processed in accordance with these procedures, with the following exception. When the written grievance is initially filed, the employee shall also forward a copy of the grievance to the second level of appeal.

(7) Response.

(a) Failure of the grievant to comply with the time limits of this grievance procedure shall render the grievance null and void.

(b) Failure of the Department to respond in a timely manner shall permit the grievance to be filed at the next level.

3. NON-MERIT STATUTORY APPEALS. A non-merit statutory appeal is an appeal of transfer in accordance with Government Code (GC) Sections 19994.2-19994.4; a petition to set aside resignation in accordance with GC Section 19996.1; an appeal for reinstatement after automatic resignation (AWOL) in accordance with GC Section 19996.2; or an appeal of layoff in accordance with GC Section 19997.14 (Chapter 7, Annex H). Non-Merit Statutory Appeals by excluded employees shall be filed in accordance with the procedures outlined in Chapter 7 of this manual.

ANNEX A

EXCLUDED EMPLOYEE GRIEVANCE PROCEDURE

CALIFORNIA CODE OF REGULATIONS

§599.859. Grievance and Appeal Procedure -- Excluded Employees.

For the purposes of this section an excluded employee is defined in Section 3527(b) of the Government Code.

(a) The purpose of grievance and appeal procedures is to provide for the prompt review and resolution of issues either formally or informally at the lowest possible level.

(b) Definitions.

(1) "Grievance." A grievance is a dispute of one or more excluded employees involving the application or interpretation of a statute, regulation, policy or practice which falls under the jurisdiction of the Director, California Department of Human Resources.

(2) "Non-Merit Statutory Appeal." A non-merit, statutory appeal is: an appeal of transfer in accordance with Sections 19994.2-19994.4 of the Government Code; a petition to set aside resignation in accordance with Section 19996.1; an appeal for reinstatement after automatic resignation (AWOL) in accordance with Section 19996.2; or an appeal of layoff in accordance with Section 19997.14.

(c) Grievance Procedures.

Each appointing power may establish in writing a procedure for the resolution of grievances of its excluded employees and any such procedure shall be subject to the review and approval by the Director. However unless such a procedure is established, the appointing power shall follow the standard grievance procedure prescribed by the Director in subsection (d).

(d) Standard Grievance Procedure. Each party involved in a grievance shall attempt to resolve the grievance promptly. Every effort should be made to complete required actions within the time limits contained in the grievance procedure. However, with the mutual consent of the parties, the time limit for any step may be extended.

(1) A grievance procedure shall consist of as few levels of review as practicable; however, no procedure shall provide for more than four levels of review.

(2) Informal Discussion. The excluded employee or the excluded employee's representative shall discuss the grievance with the excluded employee's immediate supervisor. If the grievance is not settled within five (5) work days, a written grievance may be filed.

(3) Formal Grievance--Level 1. A formal grievance may be filed no later than ten (10) work days after the event or circumstances occasioning the grievance. The first level of review shall respond to the grievance in writing within ten (10) work days after the receipt of the formal grievance.

(4) Formal Grievance--Level 2. The grievant may appeal the decision of the first level within ten (10) work days after receipt of the response. Within fifteen (15) work days

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after receipt of the appealed grievance, the person designated by the appointing power as the second level of review shall respond in writing to the grievance.

(5) Formal Grievance--Level 3. The grievant may appeal the decision of the second level within ten (10) work days after receipt of the response to the appointing power or their designee. Within fifteen (15) work days after receipt of the appeal, the appointing power or his/her designee shall respond in writing to the grievance.

(6) Formal Grievance--Level 4. The grievant may appeal the decision of the third level within ten (10) work days after receipt of the response to the Director, California Department of Human Resources or their designee. Within twenty (20) work days the Director, or their designee shall respond in writing to the grievance.

(e) Forms.

The Director shall prescribe a standard excluded employee grievance form and any additional forms to be used in processing grievances.

(f) Representation.

The excluded employee and their representative, recognized by the Director in accordance with the provisions of Section 599.857, may be authorized a reasonable amount of work time, as determined by the appointing power and approved by the Director, to prepare and present a grievance.

(g) Non-Merit Statutory Appeals.

(1) Disputes regarding appeals of layoff, appeals of transfer, petitions to set aside resignation, appeals for reinstatement after automatic resignation shall be filed in writing directly with the Director. Such appeals shall be filed in accordance with specific time limits proscribed by applicable statute.

(2) Such appeal may be assigned to a hearing officer for hearing or investigation. The hearing officer is the authorized representative of the Director and is fully authorized and empowered to grant or refuse extensions of time, to set such proceeding for hearing, to conduct a hearing or investigation in every such proceeding, and to perform any and all other acts in connection with such proceeding that may be authorized by law or by this article.

(3) Rehearing.

Within thirty (30) days after service of a copy of the decision any party may file a written petition for rehearing with the Director. Within thirty (30) days after such filing, the Director shall serve a copy of the petition upon the other parties to the proceeding.

Within sixty (60) days after service of the petition for rehearing, the Director shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within the ninety (90) day period is a denial of the petition. If a rehearing is granted, the Director may rehear the case itself on all the pertinent parts of the record of the prior

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hearing and such additional evidence and argument as may be permitted by the Director.

(4) Decision Becomes Final When.

Unless a proper application for rehearing is made in accordance with subsection (g)(3), every decision shall become final 30 days after service by the Director of a copy of such decision upon the parties to the proceeding in which the decision is rendered.

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