

RULE 14
SEPARATION OTHER THAN DISMISSAL

Section 14-10 Types of Separation Other Than Dismissal
(Eff. 3/1 5/79; Rules Rev. 11OA)

The separation of an employee from the Career Service other than dismissal shall be designated one of the following:

- a) disqualification;
- b) termination during employment probationary status;
- c) layoff;
- d) resignation;
- e) retirement;
- f) death;

The personnel action form shall show the reason for the separation and last day worked. The effective date shall be the last day on which the employee is on duty.

Section 14-20 Disqualification

14-21 General

An employee shall be separated without fault, hereinafter called a disqualification, if a legal, physical, mental or emotional impairment or incapacity, occurring or discovered after appointment, prevents satisfactory performance of the essential functions of the position.

Prior to disqualification because of physical or mental impairment or incapacity, if it is determined pursuant to the rule on reasonable accommodations for individuals with disabilities that an employee is disabled within the meaning of the Americans with Disabilities Act of 1990 (ADA), the agency or department must have attempted to make a reasonable accommodation pursuant to that rule. If a reasonable accommodation cannot be provided or the employee rejects a reasonable accommodation, disqualification may be initiated.

If it is determined that an employee is not disabled within the meaning of the ADA, the agency or department need not attempt to make a reasonable accommodation and disqualification may be initiated.

14-22 Grounds for Disqualification
(Effective 3/2/82; Rules Rev. 30B)

An employee shall be deemed to be disqualified if any of the following conditions occur:

- A. Pre-employment physical examination: When an applicant is appointed before the final report of a pre-employment health examination is received, and the final report shows that the employee is not physically qualified to perform the duties of the position;
- B. Physical or mental impairment or incapacity: When an employee becomes unable to perform the essential functions of the position because of mental or physical impairment or incapacity;
- C. Licensure, certification and other legal requirements: When laws require a license, certification, or other authorization by a federal, state or local governmental entity to perform the duties of a position and the employee does not have the required authorization.

14-23 Procedure

The appointing authority shall follow the procedures for pre-disciplinary meetings before taking any action on the disqualification. The final notice of disqualification shall contain the same statement of the reason for the disqualification as contained in the pre-disqualification letter.

Substantial amendments or additions are permitted only by repeating the pre-disqualification notice and meeting procedure. The final notice shall also contain a notice that the employee may appeal the disqualification.

However, an employee shall be relieved immediately of any duties requiring a license, certification, or other legal authorization if the employee lacks such license, certification, or other legal authorization. This change in duties shall in no way affect the employee's pay or classification prior to the completion of the disqualification proceedings.

14-24 Re-employment

(Effective May 4, 2007, Rule Revision Memo 18C)

Employees who have been separated as a result of a disqualification may be eligible for re-employment according to the provisions of Rule 3 SELECTION.

Section 14-30 Termination During Employment Probationary Status

(Effective November 1, 1980; Rules Revision Memo 127A)

14-31 Basis

An employee holding employment probationary status may be terminated at any time in accordance with paragraph 5-61 1).

14-32 Notice requirements

The employee being terminated shall receive or be sent a written notice of separation in

accordance with paragraph 16-42 Procedure for Dismissal or Separation During Probation. (Effective January 26, 1984; Rules Revision Memo 52B)

Section 14-40 Lay-off

(Effective August 1, 1980, Rule Revision Memo124A; Revised March 19, 2004, Rule Revision Memo 247B)

14-41 Definition

The separation of a Career Status, unlimited employee or a limited employee appointed prior to January 16, 2004 from the Career Service resulting from the abolishment of a position. (Revised Eff. 3/19/04, Rule Rev. 247 B)

14-42 Order of Lay-off

- a) Lay-off unit: Layoffs shall be determined by layoff unit. Lay-off units are appropriation accounts, appropriation sub-accounts, combinations of appropriation sub-accounts, or combinations of appropriation accounts which have been consolidated or de-consolidated in accordance with paragraph 14-42 b) Consolidation of appropriation accounts. (Revised Eff. 3/19/04, Rule Rev. 247B)
- b) Consolidation of appropriation accounts:
- 1) The Career Service Board may consolidate appropriation accounts or appropriation sub-accounts within a department into one lay-off unit if it can be shown that there is a high correlation between the activities of one unit of the department and others proposed to be consolidated. (Revised Eff. 3/19/04, Rule Rev. 247B)
 - 2) The Career Service Board may reverse the consolidation of appropriation accounts or appropriation sub-accounts making up one lay-off unit, or break a lay-off unit consisting of one appropriation account into sub-accounts or combinations of sub-accounts, based on business functions demonstrated by the department or upon a showing that circumstances giving rise to the consolidation are no longer applicable. (Rev'd Eff. 3/19/04, Rule Rev. 247B)
 - 3) A request for such consolidation or de-consolidation of appropriation accounts may be initiated by appointing authorities, employees, or the Personnel Director and shall be determined by the Board only after interested parties have been given an opportunity to be heard in accordance with Rule 2-61 a) 2) Mandatory Public Hearings.
 - 4) Changes to lay-off units must be approved a minimum of forty-five (45) days prior to the effective date of the lay-off. (Eff. 3/19/04, Rule Rev. 247B)
- c) Appointing authority designates positions: The appointing authority shall determine the number of positions by class which are to be abolished within the lay-off unit.
- d) Relation of positions to incumbents in layoff: When lay-off is involved, there is no relation between the positions which are abolished and the incumbents of those positions. The order of layoff is according to this Rule.

- e) Establishment of layoff groups: After separating all non-Career status employees and abolishing all vacant positions in the class, the appointing authority shall divide the employees in the class where positions are being abolished into the following groups:

Group A - Employees whose total length of service is up to five years;

Group B - Employees whose total length of service is five years and up to ten years;

Group C - Employees whose total length of service is ten years and up to fifteen years;

Group D - Employees whose total length of service is fifteen (15) years and above. (Revised Eff. 3/19/04, Rule Rev. 247B)

These lay-off groups are for the purpose of determining proficiency adjustments as covered in paragraph 14-44 c) Effect of proficiency.

- f) Effect of special qualification on lay-off group: When an employee possesses a significant and unique skill which cannot readily be learned by another employee and which is essential for the performance of the duties of the position, the Personnel Director, after thorough review and investigation, may determine that the possession of such a skill shall constitute an exception for lay-off purposes only; provided, however, that should another employee possess such a skill, such employee scheduled to be laid off shall displace the incumbent.

14-43 Length of service

- a) General rule: For lay-off purposes, length of service shall mean the total number of years, months, and days of continuous service in any class under career service. This computation shall include time on leave, including leave without pay, but shall not include service in any on-call position.

- b) Additional length of service credits from military service: Pursuant to the Colorado Constitution, Article XII, Section 15 (See Appendix), military service shall be added to the length of service for lay-off purposes under the following conditions: (Effective May 4, 2007, Rule Revision Memo 18C)

- 1) General provision on military service credits eligibility: The amount of military service credited shall be the total number of years, months, and days served in the following situations, other than for training purposes:
- (a) Service in any branch of the armed forces of the United States during any period of any declared war or any undeclared war or other armed hostilities against an armed foreign enemy, or
 - (b) Service on active duty in any such branch in any campaign or expedition for which a campaign badge is authorized. (Revised Eff. 3/19/04, Rule Rev. 247B)

- 2) Other provisions regarding military service credits:

- (a) For employees who have completed twenty (20) or more years of active military service, no military service shall be counted in determining length of service for lay-off purposes;
 - (b) For employees who have completed less than twenty (20) years of active military service, eligible military service credits shall not exceed ten (10) years.
 - (c) Employees who were granted leave of absence without pay for the purpose of serving on active military duty as defined in paragraph 14-43 b) Additional length of service credits from military service shall not be credited with military service time, but shall have the leave of absence without pay included in determining their length of service.
 - (d) To be eligible for military service credits, employees must have been separated from such service under honorable conditions. (Revised Eff. 3/19/04, Rule Rev. 247B)
 - (e) Employees whose spouse died while serving or as a result of a service-connected cause are also eligible for military service credits as defined and limited above. (Revised Eff. 3/19/04, Rule Rev. 247B)
- 3) Proof of eligibility for military service credits: Proof of eligibility for military service credits shall be established in accordance with the provisions of Article XII, Section 15 (2) of the Colorado Constitution. (Effective May 4, 2007, Rule Revision Memo 18C)
- c) Former Merit System employees: Employees transitioned from the merit system to career service under the Human Services Department transition charter amendment effective January 1, 1999 shall be given credit for continuous service as follows:
- 1) At the time of the layoff, employees who are assigned to the Department of Human Services and have been continuously assigned to said department since January 1, 1999 shall have their length of service calculated from the date the employee was employed with the merit system.
 - 2) After January 1, 1999, employees who voluntarily transfer to another department in the city shall have their length of service calculated from the date of continuous service with the City and County of Denver, provided that employees who involuntarily transfer to another department shall have their length of service calculated pursuant to the previous subparagraph. (Eff. 3/19/04, Rule Rev. 247B)

- d) Election Commission transition: Election Commission employees who are appointed to Career Service Election Commission positions pursuant to the charter amendment effective July 16, 2007 shall be given credit for continuous service as follows:
- 1) At the time of the layoff, employees who hold positions in the Election Commission and have been continuously employed in this agency since July 16, 2007 shall have their length of service calculated from the date the employee's continuous service in a full or part-time position with the City began.
 - 2) After July 16, 2007, Election Commission employees who voluntarily accept an appointment to a position in another department in the City shall have their length of service calculated from the date of continuous service with the Career Service, provided that employees who are involuntarily moved to another department shall have their length of service calculated pursuant to the previous subparagraph. (Effective June 8, 2007; Rules Revision Memo 19C)

14-44 Sequence of Lay-offs

- a) General: Unlimited employees and limited employees appointed to their positions before January 16, 2004 in Group A shall be laid off before employees in Group B, employees in Group B before employees in Group C, etc.
- b) Effect of military service credits: Employees eligible for military service credits, who have the same or greater length of service, shall be placed higher in rank order than employees who are not eligible for military service credits.
- c) Effect of proficiency:
 - 1) Employees eligible for military service credits shall have their rank order determined solely on the basis of seniority.
 - 2) Within layoff groups, the appointing authority may choose to rank employees on their knowledge, skills, abilities, expertise and/or documented performance ("proficiency") and place employees with greater proficiency above employees with longer length of service who are not eligible for military service credits. In no event may a more proficient employee be placed higher than an employee with longer length of service who is eligible for military service credits. Career Service Authority must review and approve the criteria and procedures used to determine proficiency as part of its responsibility to audit and approve the lay-off plan as set forth in CS Rule 14-46 b). (Revised Eff. 3/19/04, Rule Rev. 247B)
 - 3) Within layoff groups, the appointing authority may place below employees with the lesser length of service the less proficient employee. In no event, however, shall an employee eligible for military service credits be placed lower than an employee with lesser length of service.

14-45 Actions In Lieu of Lay-off

- a) Reassignment or transfer appointment: An employee selected to be laid off shall be given a transfer appointment to any vacancy for which qualified within the lay-off unit, subject to paragraphs 14-45 c), d) and e). (Rev Eff. 3/19/04, Rule Rev. 247B)
- b) Demotional Appointment
 - 1) General: An employee selected to be laid off shall be entitled to a demotional appointment to an existing position in the same layoff unit in a class below the employee's present class which is the highest ranking class meeting each of the following conditions:
 - (a) The employee possesses the knowledge, skills, ability, and expertise to perform the essential duties of the position;
 - (b) The class is in the same class series as the employee's present class, or the employee previously held a position in such class; and

- (c) The employee's total length of service as defined in Sub-section 14-43 Length of service must be greater than that of at least one (1) of the incumbents in the class; or there must be a vacancy in the class.(Revised Eff. 3/19/04, Rule Rev. 247B)
- 2) Effect on incumbent of position to which demotional appointment is made:
When it has been determined that a demotional appointment to a filled position in the layoff unit which meets the criteria in paragraph 14-45 b) 1) General, should take place, the person in the class of such position who has the shortest length of service as defined in Subsection 14-43 Length of Service shall be the employee who is laid off. The employee in the lower class shall be entitled to actions in lieu of lay-off pursuant to this Subsection 14-45.
- c) Effect of special qualifications: If a vacancy in a position in a pay grade with the same job rate, or if the position in the class to which such employee is to be given a demotional appointment, is one which requires a special skill as defined in paragraph 14-42 f) Effect of special requirement on lay-off group, the Personnel Director, after thorough review and investigation, may designate the possession of such skill as a qualification for a demotional appointment to that position.
- d) Effect of position type: If the person designated to be laid off holds a full-time unlimited position, and the position which meets the provisions of paragraph 14-45 a) or b) 1) is a part-time, on call, or limited position, the employee shall be offered a choice of the part-time, on call, or limited position, or the highest available full-time unlimited position meeting the qualifications of paragraph 14-45 b) 1), for which qualified.
- e) Reassignment to limited position: If there are limited positions in the same class in the layoff unit, an employee selected to be laid-off shall be given the choice of being reassigned to a limited position in lieu of lay-off, even though it is necessary to separate another employee from that position. This offer shall be made regardless of the length of service of the employee in the limited position, if appointed after January 16, 2004. This reassignment shall not result in removal of the employee from the reinstatement list or lists. (Revised Eff. 3/19/04, Rule Rev. 247B)
- f) Voluntary action in lieu of lay-off: Employees who demote to a position other than the one described in 14-45 b) or who resign during a period of agency lay-offs, and these actions occur prior to the actual lay-off date, may retain their reinstatement rights pursuant to the following procedure:
- (1) All demotions and separations during periods of lay-off will be examined to determine the causes of the transaction. Appointing authorities are asked to aid this process by entering an appropriate statement in the Remarks Section of the Personnel Action when a voluntary demotion or separation is the direct result of current lay-off proceedings.

- (2) If the Career Service Authority determines that the demotion or separation is in lieu of layoff, it will place the employee's name on the appropriate reinstatement list.
- (3) Such actions in lieu of lay-off shall be considered to be voluntary actions and pay shall be set in accordance with the provisions of Rule 9 PAY ADMINISTRATION governing voluntary demotions. (Revised Eff. 3/19/04, Rule Rev. 247B; Eff. 4/1/06; Rule Rev. 7C)

14-46 Notice of Lay-Off

- a) Layoff planning: Layoff planning, including actions in lieu of layoff, is the responsibility of the appointing authority. However, the Career Service Authority is available for procedural assistance and consultation as soon as the appointing authority has decided the number of positions by class to be abolished.
- b) Audit and approval of lay-off plan: Before an official notice of layoff is given in accordance with paragraph 14-46 c) Thirty-day notices, a written lay-off plan for the lay-off unit shall be submitted to CSA and shall have been audited and approved in writing by the Career Service Personnel Director for conformance to Section 14-40 Lay-Off of the Personnel Rules, including all subsections thereof. (Revised Eff. 3/19/04, Rule Rev. 247B)
- c) Thirty-day notices: The appointing authority shall give final notice of lay-off to affected employees a minimum of thirty (30) calendar days before the effective date of the lay-off. A copy of each such notice shall be sent to the Career Service Authority. The period of time shall be computed in accordance with sub-paragraph 19-22 a) 2). (Effective April 1, 1982; Rules Revision Memo 348; Revised Eff. 3/19/04, Rule Rev. 247B)

14-47 Effect on Leave

- a) Compensatory time and vacation leave: An employee shall be paid for all eligible leave and compensatory time credits in accordance with Rule 11 LEAVE.
- b) Sick leave: Pay for eligible sick leave credits and restoration of the balance of sick leave credits upon reinstatement shall be in accordance with Rule 11 LEAVE.

14-48 Re-employment, Re-instatement, and Promotional Re-instatement Rights (Effective May 4, 2007, Rule Revision Memo 18C)

- A. Re-employment or re-instatement appointments: The ability of a former unlimited employee, or limited employee appointed to their position before January 16, 2004, who was laid off, to be re-employed or re-instated are set forth in Rule 3 SELECTION.
- B. Promotional re-instatement appointment: The rights of an employee, who was given a demotional appointment in lieu of lay-off, to be re-instated are set forth in Rule 3 SELECTION.

14-49 Appeal

An employee who is laid off or who is demoted in lieu of layoff may appeal the action in accordance with Rule 19 APPEALS.

Section 14-50 Resignation

14-51 Voluntary Resignation

a) Notice to supervisor: It is the responsibility of an employee who plans to resign in good standing from the career service to notify his immediate supervisor in advance as follows:

- 1) at least ten (10) calendar days for employees in full-time or part-time unlimited positions.
- 2) at least four (4) calendar days for employees in full time or part-time limited positions.
- 3) at least one (1) calendar day for employees in on call positions.

The appointing authority may waive this requirement for good and sufficient reasons.

b) Payment for Accrued Vacation Leave and Compensatory Time:

Employees who resign shall receive payment for all accrued vacation leave and compensatory time for which they are eligible according to the provisions of Subsection 11-26 Effect of Separation on Vacation Credits paragraph 10-36 g) Payment for accrued compensation time on separation.

c) Acts Comprising Resignation of Incumbents in On Call Positions:

The following acts of incumbents in on-call positions shall be interpreted as resignations:

- 1) failure to inform a supervisor within two (2) calendar weeks of the date of a change of an address or a telephone number.
- 2) failure to respond within ten (10) calendar days of a date of mailing of an official communication requiring a response.
- 3) failure to respond to three (3) consecutive requests to work, provided that at least three (3) calendar weeks have elapsed between the first request and the last request.

If any of the grounds specified in the preceding paragraphs is found to exist, the employee shall be deemed to have resigned, and the supervisor shall advise the Career Service Authority in writing of the resignation, specifying the grounds.

- d) Abandonment of position: An employee shall be deemed to have abandoned his or her position if the employee fails to report for his or her assigned shift and fails to notify his or her immediate supervisor of the absence prior to the start of his or her shift for three (3) consecutive work days. This situation shall be termed "job abandonment." The required signature of the employee on the resignation shall be waived. Instead, the appointing authority shall file a statement indicating that the conditions of this paragraph have been met.

14-52 Re-employment
(Effective May 4, 2007, Rule Revision Memo 18C)

Employees who resign may be eligible for re-employment according to the provisions of Rule 3 SELECTION.

Section 14-60 Retirement
(Effective May 4, 2007, Rule Revision Memo 18C)

Any employee in the Career Service may retire, at his own or her request, when he or she meets the eligibility requirements of the Denver Employees Retirement Plan.

Section 14-70 Change in Type of Separation

When additional facts are revealed that substantially alter the basis for the original decision as to type of separation, the type of separation may be changed. The Personnel Director, upon receipt of a written request together with documentation of the reasons for the change, will approve or disapprove the requested change in writing. Only the appointing authority who signed the personnel action form separating the employee, or his successor shall be authorized to request a change in the type of separation. A copy of the Personnel Director's written approval shall be attached to the personnel action form which shall show under remarks the type of change and the reason for the change.

APPENDIX 14.A.

**CONSTITUTION OF COLORADO
ARTICLE XII, SECTION 15. VETERANS' PREFERENCE**

- (1)
 - (a) The passing grade on each competitive examination shall be the same for each candidate for appointment or employment in the personnel system of the state or in any comparable civil service or merit system of any agency or political subdivision of the state, including any municipality chartered or to be chartered under article XX of this constitution.
 - (b) Five points shall be added to the passing grade of each candidate on each such examination, except any promotional examination, who is separated under honorable conditions and who, other than for training purposes, (i) served in any branch of the armed forces of the United States during any period of any declared war or any undeclared war or other armed hostilities against an armed foreign enemy, or (ii) served on active duty in any such branch in any campaign or expedition for which a campaign badge is authorized.
 - (c) Ten points shall be added to the passing grade of any candidate of each such examination, except any promotional examination, who has so served, other than for training purposes, and who, because of disability incurred in the line of duty, is receiving monetary compensation or disability retired benefits by reason of public laws administered by the department of defense or the veterans administration, or any successor thereto.
 - (d) Five points shall be added to the passing grade of any candidate of each such examination, except any promotional examination, who is the surviving spouse of any person who was or would have been entitled to additional points under paragraph (b) or (c) of this subsection (1) or of any person who died during such service or as a result of service-connected cause while on active duty in any such branch, other than for training purposes.
 - (e) No more than a total of ten points shall be added to the passing grade of any such candidate pursuant to this subsection (1).
- (2) The certificate of the department of defense or of the veteran's administration, or any successor thereto, shall be conclusive proof of service under honorable conditions or of disability or death incurred in the line of duty during such service.

- (3) (a) When a reduction in the work force of the state or any such political subdivision thereof becomes necessary because of lack of work or curtailment of funds, employees not eligible for added points under subsection (1) of this section shall be separated before those so entitled who have the same or more service in the employment of the state or such political subdivision, counting both military service for which such points are added and such employment with the state or such political subdivision, as the case may be, from which the employee is to be separated.
- (b) In the case of such a person eligible for added points who has completed twenty or more years of active military service, no military service shall be counted in determining length of service in respect to such retention rights. In the case of such a person who has completed less than twenty years of such military service, no more than ten years of service under subsection (1) (b) (i) and (ii) shall be counted in determining such length of service for such retention rights.

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- (7) This section shall be in full force and effect on and after July 1, 1971, and shall grant veterans' preference to all persons who have served in the armed forces of the United States in any declared or undeclared war, conflict, engagement, expedition, or campaign for which a campaign badge has been authorized, and who meet the requirements of service or disability, or both, as provided in this section. This section shall apply to all public employment examinations, except promotional examination, conducted on or after such date, and it shall in all respects be self-executing.