

REVISIONS TO CAREER SERVICE RULE 13
PAY FOR PERORMANCE

PLEASE READ AS SOON AS POSSIBLE

TO: Appointing Authorities, Managers and Employees

FROM: Jeff Dolan, CSA Director

DATE: December 29, 2009

SUBJECT: Revision of Career Service Rule 13 **PAY FOR PERFORMANCE** and related rules

In response to concerns expressed by employees and managers about the PEP process, the Career Service Authority began the PEP/R Improvement Project in 2008. These changes to Rule 13 are the result of feedback from 33 focus groups with managers and employees conducted under the auspices of this project. Here is a summary of the significant changes to Rule 13 **PAY FOR PERFORMANCE** and related rules:

- Move from three performance ratings to five.
- Make it clear that PEPRs are due on an employee's merit date.
- Eliminate the merit table in Rule 13-60 B and replace it with a statement that there will be no merit increases or merit payments for PEPRs due in 2010. Once merit increases and merit payments are re-instated, an appropriate merit table will be added to the rules.
- Include a statement that the additional pay associated with a particular performance rating shall be reviewed annually and adjusted as necessary to reflect prevailing practice, subject to the annual appropriation by City Council.

As part of the PEPR/R Improvement Project, CSA has also modified the multi-page STARS evaluation form into a two page document, and is in the process of assisting agencies in implementing this new form and process. We anticipate that this roll-out will be completed in the spring of 2010. **SINCE THE CHANGE FROM THREE RATINGS TO FIVE RATINGS WILL TAKE EFFECT ON JANUARY 1, 2010, PEPRS THAT ARE DUE ON OR AFTER THAT DATE (BASED ON MERIT DATE OF JANUARY 1, 2010 OR LATER) WILL NEED TO BE SUBMITTED ON A RATING SHEET REFLECTING THE NEW FIVE RATING SYSTEM. AGENCIES THAT SUBMIT 2010 PEPRS ON THE OLD THREE-TIER RATING SHEET WILL BE CONTACTED BY CSA ABOUT HOW TO SUBMIT THE PEPR ON THE NEW FORM.**

MEMORANDUM

REVISION 43 SERIES C

TO: Holders of CSA Rule Books
FROM: Career Service Board
DATE: December 29, 2009
SUBJECT: Revision to Career Service Rules

The Career Service Board has approved the revision of Career Service Rule 13 **PAY FOR PERFORMANCE** and related rules. The effective date of this revision is January 1, 2010.

	<u>Page Number</u>	<u>Issuance Dates</u>
Remove: Entire Rule 13	9.A.-1, 9.A.-2 13-1 through 13-5 13-6 19-2, 19-3, 19-3.1	April 1, 2006 January 1, 2008 January 25, 2008 October 2, 2007
Replace Entire Rule 13	9-A.1, 9-A.2 13-1 through 13-6 19-2, 19-3, 19-3.1	December 29, 2009

PLEASE INSERT IN YOUR RULE BOOK AS SOON AS POSSIBLE. THANK YOU.

APPENDIX 9.A.

TELECOMMUTING GUIDELINES (REFERRED TO IN RULE 9-80 G.)

- A. The position for which telecommuting is proposed shall be suitable for such an assignment, with the ability to provide high quality service to the public while telecommuting being the most significant determining factor.
- B. There shall not be any disruption of service or decline in the quality of services provided by the department or agency to the public as a result of telecommuting.
- C. No employee may telecommute unless their most recent performance rating is "Successful" or higher.
- D. If an employee subsequently receives a performance rating of "Failing" or "Below expectations", the employee's authorization to telecommute shall cease. (Revised effective January 1, 2010; Rule Revision Memo 43C)
- E. The employee shall agree not to engage in employment activities other than for the agency or department during telecommuting hours.
- F. The employee must designate a primary workspace at home that is maintained in safe condition, free from hazards. As an extension of the City's work site, the same insurance and workers' compensation coverage applies.
- G. When the employee uses his or her own equipment, the employee is responsible for maintenance and repair of that equipment.
- H. The employee will take all necessary precautions to secure department or agency information and equipment in his or her home and to prevent unauthorized access to any department or agency system or information.
- I. Employees must receive prior written approval to telecommute from their appointing authority.
- J. An employee's status, benefits, compensation, and work responsibilities shall not change due to telecommuting.
- K. Representatives from the City's Office of Technology Services, CSA, and Workers' Compensation section, a designated City supervisor or the individual appointed by the employee's appointing authority for such purpose may inspect an employee's home for a business purpose related to this program upon giving reasonable notice to the employee.
- M. The employee must at all times be accessible to the workplace via cellular phone, e-mail, or other means of direct communication and be able to report to work when notified or to respond immediately to communications from other staff, supervisors, managers or clients.

- N. An employee who is granted telecommuting privileges must demonstrate that his or her productivity has been equal to or greater than his or her productivity before telecommuting was authorized.
- O. A telecommuting employee's home address and telephone number shall remain confidential and will not be released by the agency or department.
- P. The amount of time the employee is expected to work per day or pay period will not change as a result of telecommuting.
- Q. Training will be available from the CSA for all employees, supervisors and managers interested in telecommuting.
- R. Any abuse of the telecommuting privileges will be investigated and may result in corrective action, up to and including dismissal.
- S. Equipment provided by the City to the employee shall be immediately returned when telecommuting is stopped or the employee separates from employment with the City.
- T. Employees may not grieve or appeal a decision to allow or not allow telecommuting unless there is alleged discrimination.

RULE 13
PAY FOR PERFORMANCE

(Revised effective January 1, 2010; Rule Revision Memo 43C)

Purpose statement:

The purpose of this rule is to explain the Performance Enhancement Program and how the individual performance of Career Service employees is evaluated, reported and rewarded with merit increases, or merit payments.

Section 13-10 Definitions:

- A. Performance Improvement Plan ("PIP"): A document which may be used at any time during an employee's evaluation period to supplement the employee's PEP plan that may include, but is not limited to, levels of performance that must be achieved to obtain a successful rating, current performance deficiencies, support that may be provided by the department or agency, actions the employee must take to address the performance deficiencies, and a timeline for completion of the actions.
- B. Anniversary Date: The effective date of an employment appointment or a re-employment appointment to a full or part-time limited or unlimited position in the Career Service, whichever is later; or the effective date of a re-instatement appointment.
- C. Interim PEPR: A PEPR prepared prior to an employee's merit date whenever an employee permanently changes supervisors, either by promotion, re-promotion, transfer, demotion, re-assignment, or other action.
- D. Merit Increase: Periodic increase to an employee's base rate of pay determined by an employee's PEP rating and current pay step.
- E. Merit Payment: Lump sum payment of one percent (1%) of an employee's current annual salary (before any applicable withholding) determined by the employee's PEP rating and current pay step. A merit payment will not increase an employee's base rate of pay.
- F. Merit Date: The date an employee's annual evaluation period concludes and the date an employee's PEPR is due. For employees hired prior to January 1, 2008, it is the PEPR Evaluation End date the employee had as of December 31, 2007. For employees hired or re-hired on or after January 1, 2008, the merit date will either be the sixteenth of the month in which the employee's anniversary date occurred or the first of the month following the employee's anniversary date, whichever date is closest after the anniversary date. Employees hired on the first or sixteenth of a month on or after January 1, 2008 will retain the date of hire as the employee's merit date.
- G. PEP Plan: The written plan that is provided to an employee setting forth the performance standards and measures against which an employee's performance is evaluated each year in an employee's PEPR.

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Effective date: January 1, 2010

- H. PEPR Review Date: The date an employee's PEPR is reviewed with an employee.
- I. Performance Enhancement Program (PEP): The performance evaluation system used by the City and County of Denver for Career Service employees.
- J. Performance Enhancement Program Report (PEPR): The report of an employee's performance evaluation that is provided to an employee each year by the employee's supervisor.
- K. Performance Rating: The rating that is included in an employee's PEPR which is either "Outstanding," "Exceeds expectations," "Successful," "Below expectations," or "Failing."

Section 13-20 Performance Enhancement Program

The purposes of the Performance Enhancement Program ("PEP") are to outline job expectations, establish performance standards and measures, encourage and support professional development, provide on-going performance feedback, and evaluate performance.

- A. Upon appointment to a position, or the assignment of substantially different duties, the employee's supervisor shall complete a PEP plan and review it with the employee.
- B. The PEP plan may be used as a basis for disciplinary action under Rule 16 **DISCIPLINE** if an employee's performance fails to comport with the standards set forth in the PEP plan.

Section 13-30 PEP Process

- A. PEP Reporting Requirement
 - 1. All employees, except those holding on-call positions, shall have their performance formally evaluated and rated once a year.
 - 2. Each employee's performance rating shall be reflected in an official CSA PEPR form, which shall be reviewed with the employee and submitted to CSA no later than thirty (30) calendar days after an employee's merit date.
 - 3. Documentation specifically detailing the reason(s) for an employee's performance rating shall be provided to CSA and the employee. Failure to provide such documentation to CSA shall result in the PEPR being returned to the appointing authority.
 - 4. The PEPR and any supporting documentation shall be made a permanent part of the employee's official personnel record.

B. Interim PEPRs

1. Whenever an employee permanently changes supervisors, either by promotion, re-promotion, transfer, demotion, re-assignment, or other action, an interim PEPR shall be completed by the employee's former supervisor immediately preceding the change. When the employee's current supervisor terminates employment with the City, the next level manager will be responsible for completing the interim PEPR. This report shall cover the period from the last merit date to the effective date of the transaction and shall be given to the receiving supervisor.
2. If an employee's supervisor or next level manager fails to complete an interim PEPR and submit to CSA within thirty (30) calendar days after the transaction date, a rating of "Successful" shall be granted for the relevant period.
3. The receiving supervisor shall prepare a PEPR for the period between the effective date of the interim PEPR and the merit date. The overall performance rating should take into account the performance rating on the interim PEPR and the employee's current performance in proportion to the time spent in each assignment. Nothing herein shall prevent an employee from receiving an overall annual rating of "Failing" or "Below expectations," even if the interim PEPR was "Successful," "Exceeds expectations" or "Outstanding."

C. Performance Ratings

An employee's overall performance shall be rated in an employee's PEPR as one of the following:

1. Failing: Work does not meet expectations in most, if not all, areas.
2. Below expectations: Meets many, but not all job requirements. Outcomes are generally less than expected, with improvement required in one or more specific areas.
3. Successful: Consistently achieved performance standards.
4. Exceeds expectations: Consistently performs well above expected job requirements. Outcomes frequently surpass expectations.
5. Outstanding: Consistently delivers outcomes not often achieved by others; always exceeds standards.

Section 13-40 "Failing" Rating Procedure

- A. If an employee's annual performance rating is expected to be "Failing," the department or agency shall advise the employee of the expected rating a reasonable time in advance, but not less than seven (7) calendar days prior to the PEPR review date, and shall allow representation at the meeting to review the PEPR in accordance with the provisions of Rule 15 **CODE OF CONDUCT**.
- B. If an employee's annual performance rating is "Failing," the employee will not be eligible for a merit increase or merit payment for that evaluation period unless the PEPR is more than thirty (30) calendar days late, in which case the provisions of Section 13-61 C Failure to File PEPR will determine the employee's eligibility for a merit increase.
- C. The employee shall be provided with a PIP no later than ten (10) calendar days after the PEPR review date.

Section 13-50 Grievances and Appeals Relating to PEPRs

- A. An employee may grieve any performance rating pursuant to Rule 18 **DISPUTE RESOLUTION**.
- B. An employee may appeal a grievance of a "Failing" rating in accordance with Rule 19 **APPEALS**. Appeals of grievances of other ratings are not permitted.
- C. An employee may not grieve or appeal any other aspect of the Performance Enhancement Program.

Section 13-60 Eligibility for Merit Increases and Merit Payments

- A. Eligibility for merit increases and merit payments is based on an employee's overall annual performance as measured by a PEPR. However, no employee shall receive a merit increase that exceeds the highest rate of pay in the pay grade assigned to the employee's job classification. Employees who hold positions in classifications contained in the Undersheriff pay schedules are not eligible for merit increases or merit payments under this Rule 13.
- B.
 - 1. The funding for merit increases and merit payments is provided in the annual appropriation ordinance. The number of steps associated with a particular performance rating shall be reviewed annually and adjusted as necessary to reflect prevailing practices in the community. The award of merit increases and merit payments is contingent upon this annual appropriation being approved by City Council. In case of a conflict between ordinance and these rules, the ordinance will prevail.
 - 2. Merit increases and merit payments will not be awarded on PEPRs due in 2010.

- C. In the case of a declared fiscal emergency by the Mayor, and upon the request of the Mayor, there will be no merit increases or merit payments awarded for increments of at least one year. During the declared fiscal emergency appointing authorities, managers and supervisors shall complete PEPRs for employees, but no merit increases or merit payments will be awarded during this time.

13-61 Merit Date:

- A. General Provision: If an employee is eligible to receive a merit increase or merit payment, it will be effective on the merit date.
- B. If a department or agency prepares an employee's PEPR after the merit date, any merit increase or merit payment to be awarded as a result of the performance rating shall be granted retroactively to the merit date.
- C. Failure to file PEPR:
1. If a PEPR is not received in the office of CSA within thirty (30) calendar days after the merit date, a merit increase, equivalent to the step the employee would have received for a "Successful" rating, shall be granted retroactively to the merit date.
 2. If the PEPR is received after the thirty (30) calendar days and it shows an "Exceeds expectations" or "Outstanding" rating, any corresponding increase in merit pay shall be granted retroactively to the merit date.
 3. If the PEPR is received after the thirty (30) calendar days and it shows a "Below expectations" or "Failing" rating, the employee shall continue to receive the merit increase, if any, associated with a "Successful" rating, but the PEPR evidencing the "Below expectations" or "Failing" rating will become part of the employee's record.
 4. Supervisors or managers who are responsible for the submission of PEPRs to CSA and file a PEPR more than thirty (30) calendar days after the merit date may be subject to discipline for failure to perform assigned duties.

13-62 On-call Employees and Employees in Other Pay Schedules

- A. On-call employees are not eligible for merit increases or merit payments.
- B. Positions in the community rate and short range pay schedules are on-call, accordingly, merit increases or merit payments are not available. However, employees in these schedules may advance one (1) pay step in the pay range upon the approval of the appointing authority, except during a declared fiscal emergency, after having served:
 - 1. Two consecutive annual terms (an annual term is a minimum of three hundred (300) hours); or
 - 2. One term and completion of a certificate program as approved by the appointing authority.
- C. The Training pay schedule only has one step; accordingly merit increases cannot be granted.

stopping or otherwise addressing the alleged discrimination, harassment or retaliation.

b. Grievance:

- i. Any grievance which results in an alleged violation of the Career Service Rules ("Rules"), the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies and negatively impacts the employee's pay, benefits or status;
- ii. A grievance in which the agency/department failed to respond according to Rule 18 DISPUTE RESOLUTION; or
- iii. A grievance in which the agency/department has failed to implement the remedy granted and the grievant has notified the agency of the intent to file an appeal in accordance with Rule 18 DISPUTE RESOLUTION.
- iv. The grievance must be in conformance with and processed pursuant to the requirements of Rule 18 DISPUTE RESOLUTION.
- v. Notwithstanding the above provisions, written reprimands may not be appealed.

c. Grievance of Performance Enhancement Program Reports: Only grievances of Performance Enhancement Program Reports ("PEPRs") with overall ratings of "Failing" may be appealed. The only basis for reversal of the PEPR shall be an express finding that the rating was arbitrary, capricious, and without rational basis or foundation. (Revised effective January 1, 2010; Rule Revision Memo 43C)

3. Bonus or incentive payments or the lack thereof, or the criteria used by an agency or department to make or not make such payments, or any other aspect of the bonus or incentive program may not be appealed.

- B.
1. Career Service employees who do not hold career status or former employees who did not hold career status may only file direct appeals when they have alleged that an employment decision subject to direct appeal is discriminatory or when they allege a violation of the "Whistleblower Protection" ordinance.
 2. Career Service employees who do not hold career status may appeal the disposition of a complaint alleging discrimination.

Section 19-20 Filing of Appeal

A. Time Limitation

(Revised effective October 2, 2007; Rules Revision Memo 22C)

1. a. Appeals claiming violation of the City's "Whistleblower Protection" ordinance shall be filed with the Hearing Office within thirty (30) calendar days of the alleged retaliatory adverse employment action.
- b. All other appeals shall be filed with the Hearing Office within fifteen (15) calendar days after the date of notice of the action being appealed.
2. The computation of the period of time for filing an appeal shall be as follows (all time periods are calendar days):
 - a. The date of notice of the action shall be the date on the certificate of hand-delivery if hand-delivered to the appellant or the date on the certificate of mailing of the notice if sent by U.S. mail or interoffice mail.
 - b. The period of time for filing the appeal starts on the day following the date of:
 - i. The alleged retaliatory adverse employment action in the case of an appeal brought under the "Whistleblower Protection" ordinance; or
 - ii. The notice of the action or date of inaction in all other cases.
 - c. If the final date of the appeal period falls on a day the Hearing Office is not open for business, the final date for appeal shall be construed to be the next working day.
 - d. The appeal period ends at 5:00 p.m. (close of business) on the final date for appeal.

B. Form of Appeal

1. Every appeal shall be on the form prescribed by the Hearing Office and shall include the name and address of the employee filing the appeal, the action which is the subject of the appeal, the reason for the appeal, and a statement of the remedy sought.

2. For any appeal filed pursuant to 19-10 A.2.a., the employee must identify the alleged discrimination, harassment or retaliation that has not been stopped or otherwise addressed. An appeal may be dismissed if the employee fails to comply.
3. For any appeal filed pursuant to 19-10 A.2.b.i., the employee must identify the alleged violation of the Rules, the City Charter, ordinances relating to the Career Service, executive orders or written agency policies, and how the employee's pay, benefits or status were impacted. An appeal shall be dismissed if the appellant fails to comply.
4. For any appeal filed pursuant to 19-10 A.2.c., the employee must identify why the employee asserts the "Failing" PEPR was arbitrary, capricious and without rational basis or foundation. An appeal shall be dismissed if the employee fails to comply. (Revised effective January 1, 2010; Rule Revision Memo 43C)

19-25 Alternative Dispute Resolution Available

- A. A party may request mediation pursuant to Rule 18 DISPUTE RESOLUTION anytime during the appeal process. Requesting mediation shall not suspend the time limitation for filing an appeal. Scheduling the matter for mediation will not affect the appeal process or the appeal hearing date, except by agreement of the parties. If the parties mutually determine that an extension of time or a stay of the appeal is necessary to facilitate mediation, the parties shall file a motion for such relief with the Hearing Office.
- B. All mediation proceedings are considered confidential. This confidentiality shall be specifically acknowledged and agreed to by each party to mediation prior to the commencement of mediation. No testimony concerning discussions had at or during the mediation shall be admissible in any Career Service hearing. The nature and scope of the confidentiality of discussions, documents and other materials presented at the mediation shall be governed by the terms of the Colorado Dispute Resolution Act, C.R.S. 13-22-307, Sections 1 through 4 inclusive, as it may be amended.