

**REVISION OF CAREER SERVICE RULE 14-20 DISQUALIFICATION  
AND RELATED RULES**

**PLEASE READ AS SOON AS POSSIBLE**

**TO:** Appointing Authorities, Managers and Employees

**FROM:** Pete Garritt, HR Supervisor, Employee Relations and Records

**DATE:** July 19, 2012

**SUBJECT:** Revision of Career Service Rule 14-20 Disqualification and related rules

This rule revision contains the following changes:

- Moves the definition of “disqualification” from Rule 1 to Rule 14.
- Eliminates references to involuntary demotions in lieu of disqualification in accordance with Rule 14 in Rules 5 and Rule 9. Rule 14 does not provide a process for involuntary demotions in lieu of disqualification. This is also consistent with Rule 5-84 F.2 which treats demotions in lieu of disqualification, when in connection with the interactive process, as voluntary demotions.
- Re-organizes the disqualification rule for better clarity.
- Former language regarding disqualifications of employees who were hired before the City receives the results of the employee’s post-offer medical examination has been deleted. Under the new rule, they will be treated like any other medical disqualification.
- Employees must be afforded an opportunity to participate in the interactive process before they can receive a medical disqualification.
- Employees must be immediately relieved of any duties requiring a license or other legal authorization if the employee does not possess the required license or authorization. If the license is required to perform essential functions of the employee’s position, the employee must be placed on unpaid leave. An employee’s failure to possess a license or other legal authorization required to perform the essential functions of a position may be grounds for the employee’s disqualification.

**MEMORANDUM**

**REVISION 64 SERIES C**

**TO:** Holders of CSA Rule Books

**FROM:** Career Service Board

**DATE:** July 19, 2012

**SUBJECT:** Revision of Career Service Rule 14-20 Disqualification and related rules

	<b><u>Page Number</u></b>	<b><u>Issuance Dates</u></b>
<b>Remove:</b>	1-3 5-12 9-4 14-2 and 14-2.1	May 7, 2012 January 20, 2012 October 14, 2010 May 7, 2012
<b>Replace:</b>	1-3 5-12 9-4 14-2 and 14-2.1	July 19, 2012

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

Continuous service date:

The effective date of an employment appointment or a re-employment appointment in the career service, whichever is later; or the effective date of appointment from a reinstatement list plus credits for service prior to lay-off. This definition does not affect employee rights to paid time off, sick leave and vacation leave as established in the Revised Municipal Code or the Career Service Rules. (Revised effective January 1, 2010; Rules Revision Memo 42C)

Disabled individual:

An individual who (1) has a physical or mental impairment which substantially limits one or more major life functions; or (2) has a record of such impairment; or (3) is regarded as having such an impairment; or (4) has begun or successfully completed a supervised drug rehabilitation program and is no longer engaged in the illegal use of drugs. (Eff. 1/1/93; Rules Rev. 160B).

Documented performance:

A verifiable assessment of an individual's work performance, including PEPR ratings, disciplinary actions, and safety violations. (Eff. 3/19/2004, Rule Rev. 247B).

Domestic Partner:

An unmarried adult, unrelated by blood (closer than would prohibit marriage in Colorado pursuant to the Colorado Revised Statutes), with whom an unmarried employee has an exclusive committed relationship, maintains a mutual residence and shares basic living expenses. (Eff. 3/16/95; Rules Rev. 178, Series B).

Effective date:

The date when a personnel action takes effect (Revised effective May 7, 2012; Rules Revision Memo 62C).

- b. The transfer was either in lieu of layoff or anticipation of layoff.
- 3. Effect of returning from transfer: If a return from transfer is initiated during the transfer transition period, the employee shall be returned to a position in the same classification in the same department or agency as prior to the transfer.

#### 5-74 Demotion Appointments

(Effective May 4, 2007, Rule Revision Memo 18C; revised effective July 19, 2012; Rules Revision Memo 64C)

- A. Reasons for demotion: An appointing authority may give a demotion appointment in the following instances:
  - 1. In lieu of lay-off: When a position is to be abolished, in accordance with Rule 14 **SEPARATION OTHER THAN DISMISSAL**.
  - 2. In lieu of separation during employment probationary status: When an employee fails to perform satisfactorily, in accordance with subsection 5-61 Employees in Employment Probationary Status.
  - 3. Voluntary: When an employee requests assignment to work of less difficulty or responsibility or accepts a voluntary demotion in lieu of lay-off as defined in Rule 14 **SEPARATION OTHER THAN DISMISSAL**.
- B. Notice to employee: Before the demotion appointment is effective, the appointing authority shall furnish the employee a written statement containing the reasons for the demotion. If the demotion is voluntary, the statement should be signed by the employee. A copy of the statement shall be sent to the CSA before the demotion is effective.
- C. CSA approval: Voluntary demotions must satisfy the requirements of Rule 3 **RECRUITMENT**. For all other types of demotions, the CSA shall approve the demotion appointment if it finds that the employee meets the minimum qualifications for the new class.5-74 Demotion Appointments.

### 9-32 Transfers

When an employee transfers, the employee shall receive the same pay as before the transfer, unless that would be more than the range maximum of the new pay range of the new classification. In that case the employee's pay shall be set at the range maximum of the pay range of the new classification.

### 9-33 Demotion

#### A. Voluntary demotion:

1. A voluntary demotion is a demotion initiated through the request or application of an employee.
2. When an employee voluntarily demotes, pay shall be set by the appointing authority and shall not be decreased by more than six and nine-tenths percent (6.9%), unless doing so is necessary to keep the employee's pay from exceeding the range maximum of the pay range of the new classification. Before the pay can be set at a pay rate higher than the employee's current pay rate, the Personnel Director's prior approval will be required.

#### B. Demotion in lieu of lay-off: Upon a demotion in lieu of lay-off, the employee shall continue to receive the pay rate he or she earned before the demotion unless this exceeds the range maximum of the pay range of the new classification, in which case the employee shall receive the range maximum of the pay range of the new classification.

#### C. Involuntary demotion:

(Revised effective July 19, 2012; Rules Revision Memo 64C)

1. An involuntary demotion is a demotion initiated:
  - a. Through disciplinary action in accordance with Rule 16 **DISCIPLINE AND DISMISSAL**; or
  - b. In lieu of separation during employment probation in accordance with Rule 5 **APPOINTMENTS AND STATUS**.
2. When an employee is involuntarily demoted, pay shall be set by the appointing authority. At least a six and nine-tenths percent (6.9%) reduction shall be required.

#### D. In no event shall the pay upon demotion be lower than the range minimum or exceed the range maximum of the pay range of the new classification.9-33 Demotion

Section 14-15 Designees

(Effective May 7, 2012; Rules Revision Memo 62C)

Appointing authorities, including the Career Service Personnel Director ("Personnel Director"), may delegate any authority given to them under this Rule 14 to a subordinate employee except the authority to sign and submit lay-off plans to the Career Service Authority ("CSA").

Section 14-20 Disqualification

(Revised effective July 19, 2012; Rules Revision Memo 64C)

Disqualification is an involuntary, no-fault separation of an employee, based on a legal, physical, or mental impairment or incapacity of the employee, occurring or discovered after appointment, which prevents performance of the essential functions of the position.

14-21 Grounds for Disqualification

An employee may be disqualified if any of the following conditions occur:

A. Physical or mental impairment or incapacity:

1. When an employee is unable to perform the essential functions of the position because of mental or physical impairment or incapacity, with or without reasonable accommodation.
2. Before an employee can be disqualified because of a physical or mental impairment or incapacity, the employee's department or agency must have initiated the interactive process under the Americans with Disabilities Act of 1990 (ADA), as amended (described in Rule 5 **APPOINTMENTS AND STATUS**), and the ADA Coordinator must have concluded the process and referred the employee's case back to the department or agency because no reasonable accommodation was available or an offered reasonable accommodation was refused by the employee.

B. Licensure, certification and other legal requirements:

1. When laws require a license, certification, or other authorization by a federal, state or local governmental entity to perform the essential functions of a position and the employee does not have the required authorization.
2. 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. If the license, certification, or other legal authorization is required to perform the essential functions of the position, the employee shall be immediately placed on unpaid leave, unless the employee elects to substitute available paid leave for the unpaid leave. The employee's pay or classification shall not otherwise be affected prior to the completion of the disqualification proceedings.

#### 14-22 Procedure

- A. The appointing authority shall follow the procedures for pre-disciplinary meetings before taking any action on the disqualification.
- B. 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.
- C. The appointing authority shall give the employee written notice of disqualification on or before the employee's last day as a City employee.

#### Section 14-30 Separation of Employees Holding Non-career, Trainee or Intern Probationary, or Employment Probationary Status

(Revised effective May 7, 2012; Rules Revision Memo 62C)

- A. An employee holding non-career, trainee or intern probationary, or employment probationary status may be separated at any time in accordance with Rule 5 **APPOINTMENTS AND STATUS**. Such separation may only be appealed on the grounds of alleged discrimination or when the employee has alleged a violation of the City's "Whistleblower Protection" ordinance, in accordance with Rule 19 **APPEALS**.
- B. The employee shall be given written notice of separation on or before the employee's last day as a City employee.
- C. Employees holding on-call, trainee or intern probationary, or employment probationary status may also be dismissed as provided in Rule 16 **DISCIPLINE AND DISMISSAL**.