



Career Service Rules

City and County of Denver

Important – Disclaimer:

The Career Service Rules do not create or constitute any contractual rights between or among the City and County of Denver, the Career Service Board, the Office of Human Resources and any employee or applicant for employment. The Career Service Rules may only be modified, rescinded, or revised, in writing, by the Career Service Board, which reserves the right to unilaterally modify, rescind, or revise the rules at any time consistent with its rule-making process.

RULE 1 DEFINITIONS

Purpose:

The purpose of this rule is to provide meaning to terms that are used throughout these Career Service Rules.

Agency:

A unit of government identified by a "fund organization" number in an appropriation ordinance.

Appointing authority:

A municipal official appointed or elected to serve as the head of a department or agency; hence, and except as otherwise provided herein, the official authorized to appoint, supervise, manage, discipline and terminate employees of such department or agency.

In accordance with § 2.6.4 of the Denver Charter, the Director of Safety is the appointing authority for purposes of hiring, disciplining and terminating deputy sheriffs and other employees of the Sheriff Department.

Such an official may designate another official or employee within the department or agency to act as an appointing authority.

Appropriation:

An authorization by the City Council to a specified agency to expend a specified sum of money from a specified fund during a specified period for a specified purpose.

Benefits:

Paid time off, vacation leave, holiday leave, sick leave, payments for injuries or sickness received in the line of duty, health insurance, life insurance, pensions, uniform and equipment allowances, dependents' benefits, and any other financial or economic benefits as determined by the Office of Human Resources.

Break in service:

Any lapse of working time between the official separation of an employee and his subsequent re-hiring.

Career Service:

All employees of the City and their positions subject to the exceptions in the Denver City Charter.

Career Service Board:

The board created by the Denver City Charter to direct the Career Service. See Rule 2 **OFFICE OF HUMAN RESOURCES** for additional information about the Board's responsibilities.

Career Service employee:

The incumbent of a position in the Career Service.

Classification series:

The arrangement in sequence of classes that are alike in kind but not in level. For the purposes of market adjustments, a classification series shall include first line supervisors and lead workers, if so designated for the class.

Continuous service date:

For purposes of leave and layoffs, the continuous service date is 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 re-instatement 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.

Demotion:

An appointment of an employee to a position in a classification in which the range minimum of the pay grade of the new classification is lower than the range minimum of the classification previously held.

Effective date:

The date when a personnel action takes effect.

Incumbent:

The current occupant of a position.

Lay-off:

The involuntary separation of a career service status employee resulting from the abolishment of a filled position.

Lay-off unit:

A division within an agency or department as set forth in the City's Human Resource Information System, except the Fire, Police, and Sheriff departments shall each be one lay-off unit. If an agency or department is not organized by division, or an individual is not a member of a division, the next highest organizational unit will define the lay-off unit.

Length of Service:

Total number of years, months and days of continuous service, including time an employee is on unpaid leave, but exclusive of service in on-call status positions.

Month of service:

The period of time between a given date in one month and the preceding day in the following month (e.g., April 16 through May 15).

Office of Human Resources:

The agency created by the Denver Revised Municipal Code to administer the Career Service.

Promotional appointment:

An appointment of an employee to a position in a classification in which the range minimum of the pay range for the new classification is higher than the range minimum of the pay range for the employee's previous classification.

Transfer appointment:

An appointment of an employee from a position in one classification to a different position in the same classification or a classification with the same range minimum for which the employee meets the minimum qualifications.

**RULE 2
CAREER SERVICE BOARD**

The purpose of this rule is to establish how the Career Service Board (“Board”) carries out its duties as provided for under the authority of the City Charter § 9.1.1 and Chapter 18 of the Denver Revised Municipal Code.

Section 2-10 Career Service Board

2-11 Officers and Duties

A. Duties and Organization of the Board:

1. The five-member Board shall foster and maintain a merit-based personnel system for the Career Service and shall be committed to equal employment opportunity in accordance with the City Charter and the Denver Revised Municipal Code. The Board shall carry out all other duties delegated by the Denver Revised Municipal Code.
2. The Board’s primary functions are to oversee the Office of Human Resources (“OHR”), oversee the Career Service Hearing Office, and serve as a quasi-judicial body to decide appeals of decisions of the Career Service Hearing Officers (“Hearing Officers”).
3. The Board shall have two Co-Chairpersons who shall be elected on an annual basis from the members of the Board.

B. The Board is responsible for adopting, administering and enforcing rules necessary to foster and maintain this merit-based personnel system including, but not limited to rules providing:

1. For the conduct of competitive examinations of competence (Rule 3 **RECRUITMENT AND SELECTION**);
2. That appointments and promotions of employees in the Career Service shall be made on the basis of merit and ability (Rule 3 **RECRUITMENT AND SELECTION**);
3. For probationary periods (Rule 5 **APPOINTMENTS AND STATUS**);
4. For like pay for like work and for the payment of generally prevailing compensation and benefits to Career Service employees (Rule 7 **CLASSIFICATION AND COMPENSATION**);
5. For equal employment opportunity without regard to race, color, religion, national origin, sex, sexual orientation, gender identity and expression, disability, genetic information, military status, age, marital status, political affiliation, or any other status protected under federal, state and/or local law (see Rule 16 **CODE OF CONDUCT AND DISCIPLINE**) (Revised September 21, 2017; Rule Revision Memo 28D);

6. That dismissals, suspensions or disciplinary demotions of non-probationary employees in the Career Service shall be made only for cause, including the good of the service (Rule 16 **CODE OF CONDUCT AND DISCIPLINE**);
7. For grievance procedures (Rule 18 **DISPUTE RESOLUTION**); and
8. For appeals from actions of appointing authorities (Rule 19 **APPEALS**). (Revised February 12, 2016; Rule Revision Memo 18D)

C. Duties of the Co-Chairpersons:

1. One of the Co-Chairpersons shall preside at all meetings of the Board and each Co-Chairperson shall perform such other duties as may be assigned or delegated by the Board, but shall have no authority to act on behalf of the Board or in its name in any respect whatever except by special authorization of the Board. Such authorization shall be entered in the minutes of the Board meeting when such authorization is given.
2. The Co-Chairpersons may vote on all questions before the Board.
3. The Board shall designate, at its discretion, which Co-Chairperson shall have primary responsibility for presiding at Board meetings. In the absence of the Co-Chairperson assigned to preside, the other Co-Chairperson shall preside.
4. If neither Co-Chairperson is present, the remaining members of the Board shall designate a Chairperson pro term.

D. Minutes and Record Keeping:

The OHR Executive Director shall be the official custodian of all Board minutes, correspondence, documents and files.

E. Appointments:

The Board is responsible for appointing and overseeing the OHR Executive Director, Hearing Officers, and other appointees as allowed by the City Charter and Denver Revised Municipal Code.

2-12 Meeting Requirements

A. Meetings:

1. The Board shall meet on the third Thursday of each month, or as deemed necessary by the Board. (Revised November 25, 2019; Rule Revision Memo 57D)
2. The OHR Executive Director shall call special meetings of the Board

when directed to do so by a Co-Chairperson, or by two or more members of the Board, or when the OHR Executive Director deems it necessary.

3. All meetings shall be public in accordance with the open meetings requirements of the Denver Revised Municipal Code, unless an executive session or private meeting is otherwise authorized.

B. Quorum:

The presence of at least three Board members shall be required at a Board meeting before a quorum exists and the Board can transact business legally. No action or order of the Board shall be valid unless at least three members of the Board concur. Board members shall be considered present at a Board meeting if physically present at the meeting, or if participating remotely to the extent that the Board member can hear Board proceedings and be heard by those at the Board meeting simultaneously.

C. Notice:

1. Advance notice of all public meetings of the Board shall be given in accordance with the open meetings requirements of the Denver Revised Municipal Code. Such notice shall be posted at least forty-eight (48) hours in advance of such meetings.
2. Such notice shall be posted in the public area of the OHR on a bulletin board provided for such notices, on the first floor of the City and County Building, and on the Career Service Board's internet page.
3. The notice shall include the date, time and place of the meeting and a general description of the subject or subjects to be discussed. No subjects other than those specified in the notice may be addressed.
4. The Board may cancel any meeting without notice if there is insufficient business to warrant a meeting, or if there is the absence of a quorum.

D. Disqualification of a Board Member:

1. Members of the Board shall disqualify themselves in any proceeding in which the Board member's impartiality might be reasonably questioned, including but not limited to, instances where the Board member:
 - a. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed facts concerning the matter;
 - b. Served as an attorney or witness in the matter;
 - c. Is likely to be a material witness in the matter; or
 - d. Has any interest that could be substantially affected by the

outcome of the proceeding.

2. Members of the Board may disqualify themselves at any time for any other good cause.

2-13 Communications with the Board

- A. Written communications and requests to the Board shall be directed to the OHR Executive Director or to one of the Co-Chairpersons.
- B. Such written communications or requests shall be provided to all members of the Board.
- C. If any action is taken as a result of a written communication to the Board, notice of such action shall be given to the individual and/or agency concerned.
- D. Verbal communications to the Board will be allowed during scheduled meetings of the Board or as otherwise directed by the Board.

2-14 Pilot Programs

The Board may authorize the OHR Executive Director to implement new and innovative compensation/performance management programs on a pilot basis within selected agencies. If the pilot program achieves its objectives, the Board may approve citywide implementation of the new policy or rule. If the pilot program does not achieve its objectives, the Board may end the program.

2-15 Investigations by the Board and Subpoenas

The Board or its designee may, at its discretion or as requested by any City department or agency, retain a qualified investigator to conduct personnel-related investigations.

The Board has the authority under the City Charter to issue subpoenas as may be necessary to conduct an investigation.

Section 2-20 Adoption, Amendment or Repeal of Career Service Rules ("Rules")

- A. Changes to the Rules may be proposed by appointing authorities, employees, or other interested citizens. Such proposals shall be in writing and shall be directed to the OHR Executive Director or one of the Board Co-Chairpersons.
- B. When the Board or the OHR Executive Director determines that a change in the Rules is necessary or desirable, the procedure shall be as follows:
 1. The OHR Executive Director may submit to the City Attorney the proposed rule change for review, including a ruling as to legality, at any time prior to posting for public comment by the Board and before final publication.

2. The proposed rule change shall be posted on the same bulletin boards as the local, state, and federal-mandated posters, as well as the Career Service Board's internet page, and made available to appointing authorities, employees, and the general public for comments and suggestions. A short summary of the proposed rule change and the reason(s) for the proposed change shall be posted with the proposed rule change.
3. A final proposed rule change shall be posted with the Board Agenda for the meeting in which the public hearing will be held.
4. A public hearing on the proposed rule change shall be held by the Board.
5. The Board shall accept, reject or modify the proposed rule change. If the Board modifies a proposed rule change, the Board need not re-post the rule for public comment unless the Board, in its own discretion, determines that reposting is necessary.
6. When a rule is adopted, amended or repealed by the Board, such rule shall be published and made available to appointing authorities, employees and the public as promptly as possible.
7. The effective date of the rule change shall not be more than thirty (30) days after the date of adoption, amendment or repeal by the Board unless another date is designated by the Board.
8. The following changes to the Rules may be made by the OHR Executive Director without following the above-stated procedure: re-numeration; spelling and typographical error corrections; and revision and updating of internal references, appendices, and/or table of contents. Such changes may be published as administrative changes without the approval of the Board.

Section 2-30 Public Hearings by the Board

2-31 Types of Public Hearings

- A. Mandatory Public Hearings: The Board shall hold a public hearing on the following:

1. Proposed changes to the classification and pay plan, including changes resulting from annual market analysis recommendations, subject to the exceptions for interim adjustments in Rule 7-21 subsection D;

(Revised April 9, 2021; Rule Revision Memo 66D)

2. Proposed changes to employee benefits prior to the OHR Executive Director making any recommendations to the Mayor and City Council as provided in the Denver Revised Municipal Code;
3. Determination of prevailing wages, in accordance with the Denver Revised Municipal Code;
4. Adoption, amendment or repeal of a rule, except for changes that are administrative.

(Revised November 25, 2019; Rule Revision Memo 57D)

- B. Discretionary Public hearings: The Board may hold a public hearing, at its discretion, on any matter within the jurisdiction of the Board.

2-32 Notice and Conduct

A. Notice of Hearings:

1. Notice of public hearings by the Board shall be given at least thirteen (13) calendar days in advance of the hearing, and shall state the time, date, place, and subject of the hearing, who may be heard, and the process to be heard.
2. Such notice shall be posted by any means available, whether in electronic or physical format, including electronically on the public website of the Career Service Board, the public area of the OHR on a bulletin board provided for such notices, and on the first floor of the City and County Building. (Revised July 15, 2021; Rule Revision Memo 68D)

B. Special Additional Notice Requirements:

When the subject of a hearing is a proposed pay plan adjustment or a proposed rule change, the OHR shall provide electronic copies of the notice of public hearing to appointing authorities.

(Revised December 17, 2020; Rule Revision Memo 60D)

C. Conduct of Hearings by the Board:

1. Persons wishing to speak at a hearing shall have their names placed on the agenda in advance of the hearing. The Board, in its discretion, may, at any time, admit more speakers preceding or during the hearing. The Board may, in its discretion, place reasonable limitations on the hearing.

2. Proceedings of a mandatory hearing shall be recorded, but need not be transcribed unless required in litigation. If a transcript is required, the party requesting the transcript shall pay the costs.
3. At the discretion of the Board, hearings may be continued for good cause.

Section 2-40 OHR Executive Director

A. Powers and Duties:

The OHR Executive Director shall serve at the pleasure of the Board, report directly to the Board, and perform all duties and responsibilities as directed by the Board, including those contained in these Rules, and as delegated by the Denver Revised Municipal Code. In addition, the OHR Executive Director's powers and duties are:

1. To interpret and enforce the Rules adopted by the Board in such a manner as to promote and maintain the principles of a merit-based personnel system and the just, speedy and effective resolution of disputes (Revised January 22, 2010; Rule Revision Memo 44C);
2. To prepare and administer examinations, determine qualifications of applicants, establish eligible lists and refer eligible applicants to appointing authorities to fill vacancies;
3. To establish and maintain a roster of all Career Service employees;
4. To establish and maintain such records, forms and procedures as necessary to control personnel actions;
5. To consider reasonable suggestions from appointing authorities, the public, and employees or their representatives, pertaining to any phase of the personnel program;
6. To delegate to a designee such duties as, in his/her opinion are appropriate, unless otherwise specifically provided in these rules;
7. To administer the Education Refund Program in accordance with the Denver Revised Municipal Code; and
8. To perform such other duties as may be necessary to foster and maintain a merit-based personnel system for the Career Service, further equal employment opportunity for all employees and applicants without regard to the Protected Characteristics as defined in Rule 16-22, or otherwise ensure the efficient operation of OHR. (Revised June 22, 2018; Rule Revision Memo 43D)

B. Normal Working Hours:

The OHR Executive Director shall keep the OHR open for business from 8:00

a.m. to 5:00 p.m. Monday through Friday of each week, holidays excepted, unless good cause warrants a temporary or permanent change.

C. Interim OHR Executive Director: (Revised October 21, 2021; Rule Revision Memo 76D)

1. When the OHR Executive Director will be absent for sixty (60) days or less, the OHR Executive Director shall designate a suitable and competent person as interim OHR Executive Director, unless the Board elects to designate one instead.
2. If the absence is going to be more than sixty (60) days, or there is a vacancy in the OHR Executive Director role, the Board shall designate an interim OHR Executive Director.
3. Nothing in this rule should be construed as preventing the designation of multiple persons to fill the interim OHR Executive Director role.

Section 2-50 Career Service Hearing Officers

A. Powers and Duties:

Career Service Hearing Officers serve at the pleasure of the Board, report directly to the Board, and perform all duties and responsibilities including those contained in these Rules, and as delegated by City Charter, to maintain a fair and efficient appeal process. In addition, the Hearing Officers' powers and duties are:

1. To ensure due process and to have authority to preside over all appeals permitted by Rule 19 **APPEALS** regarding employment disputes, and to perform the functions necessary to implement and maintain a fair, speedy, and efficient process for appeals.
 - a. Hear and evaluate testimony under oath or affirmation to determine case facts and maintain order and decorum, dispose of objections expressed, and permit questioning and cross-examination of witnesses.
 - b. Make rulings on motions; hold pre-hearing conferences; set hearing dates; grant continuances or stays; issue subpoenas; administer oaths; continue, dismiss, or rule on cases subject to appeal; research case law; render written decisions and orders; and related activities.
 - c. Take necessary action to control proceedings.
2. To administer the Alternative Dispute Resolution Program.

RULE 3 RECRUITMENT AND SELECTION

Purpose statement:

The purpose of this rule is to provide policy and practices for an efficient, consistent, and competitive hiring process that promotes equal employment opportunity without regard to the Protected Characteristics as defined in **Rule 16 Code of Conduct and Discipline** while enabling recruitment of the broadest possible pool of candidates. This rule supports collaboration with City and County of Denver agencies and departments to attract and build a highly talented, productive, and engaged workforce. (Revised June 22, 2018; Rule Revision Memo 43D)

As defined in the City Charter, the Office of Human Resources (OHR) manages and administers hiring principles and practices, made on the basis of merit and ability for all Career Service system jobs.

Career Service employees have a right to work in an environment free of discrimination and harassment because of any status protected by federal, state or local laws (see Rule 16 Code of Conduct and Discipline).

Tools used by the Office of Human Resources shall be focused on facilitating the recruitment and selection process to foster and maintain a merit-based personnel system.

Section 3-5 Accommodation Pursuant to the Americans with Disabilities Act (ADA)

Upon request, the OHR will work with a qualified individual with a disability, as defined in the ADA, in a good faith effort to make necessary reasonable accommodations related to any aspect of the hiring process. A documented medical need for accommodation, prepared and signed by a health care provider, may be required.

Section 3-10 Definitions

- A. Agency Hiring Authority: The person in an agency or department who is responsible for the final hiring decision.
- B. Agency Hiring Manager: The person in an agency or department who is the primary contact for the OHR throughout the recruit-to-hire process.
- C. Applicant: The person who submits a formal application for employment in the City's applicant tracking system.
- D. Assessment: A valid, job-related tool used to measure competencies that are associated with job performance.
- E. Candidate: The applicant who meets qualifications and is referred by the OHR to an Agency Hiring Authority and/or Hiring Manager for review and consideration for a job opening.

- F. Evergreen requisition: A requisition that typically remains perpetually open for continuous hiring due to high-turnover, high volume jobs, or to proactively build the City and County of Denver's talent pool.
- G. Merit-based system: As described in the City Charter, a set of principles designed to ensure fair employment practices and selection of hires based on merit and ability, free of political influence, favoritism, or discrimination.
- H. Minimum qualifications: The essential combination of work experience, licensure, certification, and/or education required for an applicant to be considered for and hired into a position, as outlined in the OHR job classification specification.
- I. Performance-based skills: An ability to perform a specific task that requires specialized knowledge, tools, or techniques related to a particular field or job function.
- J. Pre-employment contingencies: The conditions or requirements that ensure the selected candidate meets all necessary qualifications and legal requirements of a Career Service position. Pre-employment contingencies must be satisfied before a candidate is appointed or promoted to a Career Service position. Such contingencies may include, but are not limited to, background checks, medical evaluations, and the provision and/or completion of required pre-hire paperwork.
- K. Recommended list: A list of candidates that meet the minimum qualifications for the job opening which is sent to the Agency Hiring Authority and/or Agency Hiring Manager.
- L. Recruitment: The process of identifying, attracting and engaging qualified applicants for a Career Service position on the basis of merit and ability.
- M. Selection: The process of identifying a qualified candidate for appointment or promotion to a Career Service position on the basis of merit and ability.

Section 3-20 Delegation of Authority by the OHR Executive Director

The OHR Executive Director may delegate any authority given under this rule to a subordinate employee or to a designee (an appointing authority outside of the OHR).

When the designation is outside of the OHR, a formal agreement must be written and signed by both the OHR Executive Director and the designee prior to the delegation of authority. The designee shall act as an extension of the OHR and operate in accordance with Career Service Rules, and OHR's policies, practices and governance. At the discretion of the OHR Executive Director, the designee is subject to regular compliance reviews and the delegation may be revoked at any time and for any reason.

Section 3-25 Responsibilities in the Recruitment and Selection Process

The OHR and Agency Hiring Authority and/or Agency Hiring Manager work collaboratively on the following steps in the recruitment and selection process for Career Service jobs:

- A. Review job classification specifications and identify preferred qualifications for the posting;
- B. Outline the recruitment strategy, action plan, and timeline;
- C. Advertise a job opening and source applicants;
- D. Manage and administer pre-employment assessments;
- E. Review and evaluate applicants in accordance with the job classification specifications and preferred qualifications to identify candidates for interviews;
- F. Schedule and conduct candidate interviews;
- G. Select a candidate for hire;
- H. Set candidate pay and extend a conditional verbal offer to the selected candidate in conformance with Rule 9 Pay Administration;
- I. Prepare a conditional offer letter and send to the selected candidate;
- J. Facilitate the successful completion of the necessary pre-employment contingencies for the selected candidate;
- K. Upon successful clearance of pre-employment contingencies, contact and confirm start date with the Career Service employee;
- L. Notify candidates who were interviewed and not selected; and
- M. Update the status of all applicants in the applicant tracking system.

Section 3-30 Types of Recruitments and Posting a Job

- A. A recruitment for a job opportunity in the Career Service may be either an:
 - 1. External and internal recruitment: Open to all applicants; or
 - 2. Internal recruitment: Open only to applicants who are currently City employees, including anyone who has been the subject of a layoff and is eligible for reinstatement under **Rule 14-58**.
- B. Length of Posting
 - 1. A job opportunity that is announced must be posted on the City's web site for at least two (2) business days and may not be posted for more than three (3) months. Posting a notice of a job opening for a transfer, demotion, or re-instatement appointment is not always required. (Revised August 19, 2021; Rule Revision 69D)
- C. Content of Job Postings:

1. The notice must contain the job classification title, business title, pay range, benefits, position type (limited/unlimited/on-call), job description, minimum qualifications, preferred qualifications, physical requirements (where applicable), information on assessments, pre-employment contingencies, an application deadline and non-performance-based probation requirements. (Revised August 19, 2021; Rule Revision 69D)
2. Evergreen requisitions must indicate whether the posting is open continuously, specify the closing date once it is determined, and state whether there is a current job opening.

Section 3-40 Applicant and Candidate Evaluation Methods

Applicants and candidates are evaluated on one or more of the following:

- A. Evaluation of experience, licensure, certification, and/or education as submitted by the applicant;
- B. Assessments;
- C. Interviews or screenings;
- D. References and performance history of current or former employees; or
- E. Any other appropriate measures based on the requirements of the job.

Section 3-41 Substitution of Experience for Education

The City acknowledges that relevant professional experience may, in certain circumstances, be considered equivalent to formal education. Therefore, one year of the appropriate type and level of experience may be substituted for each required year of post-high school education for all classifications, subject to the limitations below:

- A. Two years of the appropriate type and level of experience may be substituted for each required year of post-high school education for all classifications at or above the type and level of a director, such as the classification title of "Director." (Revised October 21, 2021; Rule Revision Memo 73D)
- B. No substitution of experience for education will be permitted for:
 1. Classifications that require a college degree or graduate degree in order to obtain a license or certification to practice within the discipline.
 2. Classifications that require a college degree to provide optimum successful performance at the time of job entry.
 3. Classifications where vocational, or other specialized education beyond high school is required to meet certification or licensure requirements.

- C. If a degree is not required for licensure, the classification may accept the licensure as a substitution for any degree requirement.

Section 3-42 Disqualification of Applicants and Candidates

Applicants and candidates shall be disqualified from further consideration in the recruitment and selection process for any valid reason including, but not limited to, the following:

- A. Failure to meet minimum qualifications and/or licensing or certification requirements as defined in the job classification specification;
- B. Providing materially false information in an application or resume, falsification of assessment scores or records, cheating, taking assessments for which the applicant is not the registered applicant;
- C. If a former employee refuses an offer of re-instatement to the layoff unit as described in **Rule 14 Separation Other Than Dismissal**, that former employee is no longer eligible for that specific opening but can remain in consideration for other jobs consistent with their reinstatement rights under the layoff;
- D. The Agency Hiring Authority and/or Agency Hiring Manager did not follow this **Rule 3 Recruitment and Selection** in the recruitment and selection process.
- E. Acting in a harassing or threatening manner such as committing, or threatening to commit, any act of violence against City employees involved in the recruitment and selection process, including intimidation, threats, using inappropriate or derogatory language, or other behavior reasonably perceived as hostile;
- F. Dismissal from employment for any reason from the City and County of Denver in the last five years; or
- G. Providing materially false information on the pre-employment documents.

Applicants may be disqualified from further consideration in the recruitment and selection process for any valid reason including, but not limited to, the following:

- A. Failure to attain the required minimum passing score on an assessment(s); or
- B. The candidate did not pass the required pre-employment contingencies.

Section 3-43 Veterans' Preference

Veterans' preference for applicants will be provided under the terms as set forth in the Colorado Constitution (see Appendix 3.A).

Section 3-44 Pre-Employment Assessments

- A. The OHR is solely responsible for managing, developing, and/or approving all pre-employment assessments.
- B. Departments and agencies, other than the OHR, may not acquire, revise or administer pre-employment or on-the-job assessments as part of the selection process without prior written approval from the OHR Executive Director. If approved, such assessments must measure performance-based skills as defined in this Rule 3, and may be administered by a department supervisor or subject matter expert, and only if this administration is specifically authorized in writing by the OHR Executive Director. Requests for other types of assessments (beyond performance-based skills) may be considered and approved by the OHR only for certain high-touch Department of Safety classifications or other exceptional circumstances, as determined by the OHR.
- C. The OHR Executive Director determines what classifications may use an assessment, how assessments are scored, the appropriate passing score (if applicable) and the applicability of current scores for future recruitments. Agency appointing authorities may determine whether assessments are utilized on a division-wide basis for designated classifications. Such determinations must be utilized consistently on all hiring processes for the designated classification(s) and for all applicants for those designated classifications within that division.
 - 1. Multiple part assessments: All parts of the assessment must be considered unless the OHR decides that failing one part of a multiple part assessment determines an overall failing result. In this case, the applicant is considered to have failed the full assessment and the other parts of the assessment cannot be taken.
 - 2. Reusing assessment results: Applicant assessment results may be applied to future recruitments. The applicability of assessment results is at the discretion of the OHR and depends on various factors including but not limited to: duties and responsibilities of the job, assessment content and duration, length of time elapsed since last assessment, changes in industry standards, and/or changes in job classification specifications.
 - 3. Retaking assessments:
 - a. A waiting period may apply before retaking certain assessments. Applicants' eligibility to retake an assessment will be determined based on OHR assessment guidelines.
 - b. Assessment results are valid for the duration of a recruitment and selection process. If a job is posted, closed and re-opened, applicants may not reapply for that position since their application and assessment is already attached to the recruitment for that position. To retake an assessment, applicants must wait for a new job opening.
 - 4. Applicant access to assessment results: All applicants can view their assessment results by accessing their personal profile in the applicant tracking system.
 - 5. Current employees may request feedback on their assessment from the OHR. The OHR will summarize additional feedback from the assessment to employees

as needed. Confidentiality of assessment results: A confidential record of assessment results is kept by the OHR. Results are only shared with the Agency Hiring Authority and/or Agency Hiring Manager in conjunction with a job vacancy.

Section 3-45 Scheduling of Assessments

- A. All assessments must be taken by applicants when scheduled for an in-person appointment or completed by the due date as specified for online assessments.
- B. Under certain circumstances, deferred assessments are permissible for applicants who miss a scheduled due date. At the discretion of the OHR Executive Director, a request for deferral may be granted for the following reasons when supported by appropriate documentation:
 - 1. The applicant has jury duty;
 - 2. The applicant has been subpoenaed to appear in court or before an administrative tribunal;
 - 3. The applicant has been ordered to perform City business;
 - 4. The applicant is a City employee who has a work-related injury, which renders the candidate unable to take the assessment when scheduled; or
 - 5. Any other good cause in the OHR Executive Director's judgment.
- C. A deferred assessment must be taken within the timeframe specified by the OHR Executive Director when approving the deferral. An applicant that takes and successfully passes a deferred assessment will be eligible at that point in the recruitment process only if a candidate has not yet been selected.

Section 3-50 Recommended Candidate List and Interviews

A minimum of three (3) qualified candidates must be recommended and interviewed for each job requisition. If fewer than three (3) eligible candidates are available, the department or agency must interview all candidates on the recommended list. The OHR may refer fewer than three (3) candidates who meet minimum qualifications if unable to identify three candidates who meet both minimum qualifications and logistical position requirements such as schedule, hours, or work location.

- A. The OHR and Agency Hiring Authority and/or Agency Hiring Manager will jointly determine the best qualified candidate for a job and are not required to provide a specific reason for not selecting any candidate.
- B. To avoid favoritism in hiring, the City's Code of Ethics prohibits an employee from appointing, hiring, or being in a direct line of supervision over a member of his or her immediate family for any type of employment. The Board of Ethics must approve any waivers to this requirement. Refer to the Denver Code of Ethics, as it may be amended from time to time.

1. Immediate family in this context means immediate family as defined in the Denver Code of Ethics (**Source: D.R.M.C. § 2-52**). (Revised May 22, 2018; Rule Revision Memo 41D)
- C. If the agency hiring authority or agency hiring manager schedules a minimum of three (3) interviews and fewer than three candidates respond to the interview invitation using the contact information provided, or if scheduled candidates withdraw prior to their interview or fail to appear, resulting in fewer than three candidates being interviewed, the agency hiring authority or agency hiring manager may proceed with selecting a candidate for hire based on the interviews completed.
- D. Duration of Recommended Candidate List: If a posting closes and the selected candidate accepts an offer but fails to clear pre-employment contingencies, fails to report, or rescinds their acceptance before or on their start date, the hiring manager may use the Recommended Candidate List from that posting to hire a replacement candidate for up to three months from the date of written offer acceptance, in compliance with all applicable local ordinances and state and federal laws.

Section 3-51 Selecting a Candidate for Hire

- A. An Agency Hiring Authority and/or Agency Hiring Manager may only fill a vacant Career Service job with a candidate whose name appears on the Recommended Candidate List provided by the OHR as described in this **Rule 3**, or who falls within one of the following exceptions:
 1. Career Service employees who are eligible for transfer or demotion appointments (including employees who are eligible for an ADA re-assignment under **Rule 12 Leave and Accommodations for Pregnancy and Extended Illnesses and Injuries**, or former employees who are eligible for re-employment, as defined in **Rule 5 Appointments and Status**. (Revised August 19, 2021; Rule Revision Memo 69D)
 2. Paid trainees and paid interns who have successfully completed the training or internship as provided in **Rule 5 Appointments and Status** may be promoted into the job that the trainee or intern was being trained to perform.
 3. Trades apprentices who meet the minimum qualifications of the applicable trade's classification specification and have successfully completed the required apprenticeship program requirements (as documented by the employee's department or agency and verified by the OHR) may be promoted into the applicable trade.
 4. Employees in the Deputy Sheriff pay table classifications who are appointed to Deputy Sheriff Major and Deputy Sheriff Division Chief jobs after May 31, 2014. (Revised April 9, 2021; Rule Revision Memo 66D)
- B. If the candidate is a current or former City employee, the Agency Hiring Authority and/or Agency Hiring Manager should collaborate with the OHR to review the candidate's past performance after interviews have been completed and prior to extending a conditional

offer of employment. This review should include contacting the candidate's current supervisor for a reference; For former City employees, reviewing the candidate's official overall performance rating from the three (3) most recent performance cycles and any documented disciplinary actions, if available. This requirement does not apply to candidates being re- assigned under the ADA.

C. Work Visas – Eligibility of Foreign Nationals to Work in the Career Service System:

1. The City and County of Denver does not provide any employment-based non-immigrant or immigrant visa sponsorship.
2. Subject to pre-approval by the OHR Executive Director, an exception may be granted to an appointing authority to sponsor a work visa for a foreign national.
3. No manager has the authority to represent, promise, or commit to an employee or applicant that the City will sponsor or finance any portion of the visa application process.

Section 3-52 Re-instatement After Layoff

Employees or former employees who have been laid off within the past twelve (12) months shall be re-instated to the job classification within the layoff unit from which they were terminated in accordance with **Rule 14 Separation Other Than Dismissal**.

Section 3-60 Extending a Conditional Job Offer to a Candidate

An offer of employment is contingent on the verification of credentials and other information required by law and City policies, including the successful completion of a background check. Candidates must pass a criminal background check and other verifications required for the position which may include, but are not limited to, employment and/or education verification, motor vehicle record check, drug test, and/or physical.

For more information on compensation, including Recruitment Premium and Relocation Premium, please refer to **Rule 9 Pay Administration**.

APPENDIX 3.A.

This Appendix is provided for informational purposes and is not considered a part of the Rules.

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

(1)(a)(I) The minimum requirements for a candidate to be placed on an eligible list for a position shall be the same for each candidate for appointment or employment in the state personnel system 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.

(II) If a numerical method is used for the comparative analysis based on objective criteria, applicants entitled to preference under this section shall be given preference in accordance with paragraphs (b) to (e) of this subsection (1). If a nonnumerical method is used, applicants entitled to preference under this section shall be added to the interview eligible list.

(b) Five points shall be added to the comparative analysis score of each candidate 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 comparative analysis score of any candidate 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 veteran's administration, or any successor thereto.

(d) Five points shall be added to the comparative analysis score of any candidate 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 comparative analysis score 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 preference 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 preference is given 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 preference 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.

(4) The state personnel board and each comparable supervisory or administrative board of any such civil service or merit system of any agency of the state or any such political subdivision thereof shall implement the provisions of this section to assure that all persons entitled to preference in a comparative analysis and retention shall enjoy their full privileges and rights granted by this section.

(5) No person shall receive preference pursuant to this section with respect to a promotional opportunity. Any promotional opportunity that is also open to persons other than employees for whom such appointment would be a promotion, shall be considered a promotional opportunity for the purposes of this section.

(6) Repealed

(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 opportunities, except as set forth in subsection (5) of this section, conducted on or after such date, and it shall be in all respects self-executing.

This Appendix is provided for informational purposes and is not considered a part of the Rules.

RULE 5
APPOINTMENTS AND STATUS

Purpose statement:

The purpose of this rule is to identify:

- A. Types of appointments (the process of moving employees into vacant positions) and the process of making appointments;
- B. Types of positions and employee status;
- C. Medical groups and standards following a conditional offer of employment;
- D. Dual incumbency and dual employment; and
- E. Compliance with the Immigration Reform and Control Act of 1986.

(Revised May 9, 2016; Rule Revision Memo 19D)

Section 5-10 Appointments

- A. The Career Service shall comprise all employees of the City and their positions, subject to the exceptions in the City Charter.
- B. Appointing authorities, including the Office of Human Resources (“OHR”) Executive Director, may delegate any authority provided under this Rule 5 to a subordinate employee.

5-11 Appointments of Applicants Who Are Not in the Career Service

The following is a list of the types of appointments of applicants who are not in the Career Service as defined in Career Service Rule 1 **DEFINITIONS**:

- A. Employment appointment: An appointment made as a result of referral of an employment list in accordance with Rule 3 **RECRUITMENT AND SELECTION**.
- B. Reinstatement appointment: An appointment of a former employee who had been laid off that is made as a result of referral from a reinstatement list in accordance with Rule 3-52 **Reinstatement After Layoff** and Rule 14-58 **Reinstatement**.
- C. Re-employment appointment: An appointment of a former employee to a position in the classification in which the employee was previously employed within the preceding five (5) years, or to a successor classification; or to any classification for which the employee is qualified, with the same or lower range minimum than the former classification, subject to the following conditions:
 - 1. Former employees whose separation was the result of a dismissal are not eligible for re-employment;

2. An appointment that is a reinstatement is not a re-employment appointment;
3. In order to determine eligibility for re-employment into a successor classification, the OHR Executive Director may, on a case-by-case basis, review the duties previously performed as well as classification and pay; and
4. A former employee who is re-employed shall serve in an employment probationary status.

5-12 Appointments of Employees Who Are in the Career Service

The following is a list of the types of appointments of employees who are in the Career Service as defined in Career Service Rule 1 **DEFINITIONS**:

A. Promotional appointment

B. Transfer appointment:

1. An employee may be given a transfer appointment between departments or agencies provided that the employee and the receiving appointing authority consent.
2. Unless otherwise agreed upon, a transfer appointment between departments or agencies becomes effective thirty (30) calendar days after the releasing department or agency is notified that the employee and the receiving department or agency have both consented to the transfer. However, the time may be shortened if the effective date is set jointly by the releasing appointing authority and the receiving appointing authority.

C. Demotion appointment:

1. Reasons for demotion: An appointing authority may give a demotion appointment in the following instances:
 - a. Voluntary:
 - i. When an employee requests the demotion; or
 - ii. When an employee accepts the offer of a position with lower pay and benefits as a reasonable accommodation in the ADA Interactive Process.
 - b. Involuntary:
 - i. Through disciplinary action in accordance with Rule 16 **DISCIPLINE AND DISMISSAL**; or

- ii. In lieu of separation during employment probation in accordance with this Rule 5.
- 2. Notice to employee: Before a demotion appointment is effective, the following documentation shall be provided to the employee and submitted to the OHR:
 - a. Written consent of the employee to a voluntary demotion; or
 - b. A written notice of disciplinary demotion as required by Rule 16 **DISCIPLINE AND DISMISSAL**; or
 - c. A written notice of demotion in lieu of separation during employment probation, or during paid trainee or paid intern status.

Section 5-20 Types of Positions

5-21 General

All positions in the Career Service shall be identified by the following two (2) characteristics:

- A. Duration; and
- B. Number of hours worked.

5-22 Duration

The duration of each position in the Career Service shall be determined by one of the following definitions:

- A. Unlimited positions: A position which has no specified ending date.
- B. Limited position: A position which has a specified ending date. Examples are positions funded by grants, positions created to meet a special project or seasonal need, positions created to replace an employee on extended leave, positions created to provide program continuity on an acting basis while recruitment is underway to fill a vacant position, and similar positions created with a time limitation for comparable specific purposes.

5-23 Number of Hours Worked

- A. Identification of positions by category: Each position in the Career Service shall be identified by one of the following categories based on work schedule:
 - 1. Full time;
 - 2. Part time;
 - 3. On call.

B. Criteria of categories:

1. Full time: A full time position is one in which an employee is scheduled to work forty (40) hours per week.
2. Part time: A part time position is one in which an employee is scheduled to work less than forty (40) hours per week.
3. On call: An on call position is one in which the employee works as needed. On-call positions may have routine or variable work patterns and are generally filled to accommodate seasonal or short term activities in various city agencies. Ushers are an example. Since Election Judges are not in the Career Service, they are not considered to be on-call Career Service employees.

Section 5-30 Employee Status

Every Career Service employee shall hold at least one of the following employee status identifications:

A. At-will status, which is made up of:

1. On-call status;
2. Paid trainee or paid intern status; and
3. Employment probationary status.

B. Career status

C. Senior Command Staff status.

5-31 At-will Status

At-will employees:

- A. May be separated with or without notice and with or without cause at any time; and
- B. May not appeal any decision relating to his or her employment, including separation, except on the grounds of violation of the City's "Whistleblower Protection" ordinance.

5-32 On-call status

Every person who is appointed to an on-call position shall hold on-call status for the duration of the appointment.

5-33 Paid Trainee or Paid Intern Status

- A. Every person who is appointed to a trainee or intern position shall hold paid

trainee or paid intern status for the duration of the appointment. The Public Safety Cadet classification is considered a trainee classification under these rules.

- B. The duration of paid trainee and paid intern status is set by the applicable classification specification.
- C. End of paid training or paid internship period:
 - 1. The department or agency shall report to the OHR, in writing, at the conclusion of paid trainee or paid intern status, whether the trainee or intern has successfully completed the training or internship period by acquiring the competencies, knowledge, skills and abilities necessary to satisfactorily perform the duties of the position.
 - 2. An appointing authority may request, in writing to the OHR Executive Director, that the trainee or intern be deemed to have successfully completed the training or internship period prior to the employee's completion of the training or internship period.
 - 3. Upon a determination by the OHR that the trainee or intern has successfully completed the training or internship period, the department or agency may promote the trainee or intern into the position the trainee or intern was being trained to perform.

5-34 Employment Probationary Status

Every person when first appointed or re-employed to a full time or part time, limited or unlimited Career Service position, that is not a trainee or intern position, shall hold employment probationary status for the probationary period established by this Rule 5.

An employment probationary period shall be regarded as an integral part of the examination process. It shall be utilized for closely observing the employee's work, assisting the employee to adjust to the duties and responsibilities of the position, and to separate or demote an employee as provided in this rule.

A. Duration of employment probation:

Except as provided below, the minimum period of employment probation shall be six (6) months.

- 1. The minimum period of employment probation for employees in Deputy Sheriff, County Court Marshal, County Court Marshal Chief, County Court Marshal Supervisor, Social Case Worker, Social Case Worker Bilingual, Social Case Worker Senior, Social Case Worker Senior Bilingual, Social Case Worker Lead, and Social Case Worker Lead Bilingual classifications shall be twelve (12) months.
- 2. The minimum period of employment probation for employees in the Airport Emergency Dispatcher, Airport Operations Representative, 911 Emergency Communication Technician, 911 Police Dispatcher, Probation Officer I, Probation Officer II, Probation Officer III, Child Support

Technician I, and Eligibility Technician I classifications shall be nine (9) months.

B. An employee's end of probation date shall be calculated by adding the required amount of months (six, nine or twelve months) to the employee's hire date and subtracting a day.

C. Required training:
(Revised May 22, 2018; Rule Revision Memo 40D)

1. All Career Service employees serving employment probation are required to complete training programs during their probationary period that address the following topics:
 - a. New employee orientation;
 - b. Ethics and public accountability;
 - c. The Respectful Workplace: Employee Edition, which includes workplace violence prevention;
 - d. Sexual harassment prevention;
 - e. STARS – Denver City values;
 - f. Workday – the City's HR and financial information system;
 - g. Performance management – performance reviews and goal setting; and
 - h. Any other training required by the employee's department or agency, the DRMC, and/or applicable Executive Orders, that are clearly communicated to the employee.
2. Employees appointed or re-allocated to positions with supervisory or managerial duties are required to complete, in addition to the training listed above, new manager training that addresses the following topics:
 - a. The Respectful Workplace: Manager Edition, which includes workplace violence prevention;
 - b. Employment laws, the Career Service Rules, and discipline;
 - c. Workday training for those who manage others; and
 - d. KRONOS timekeeping.

Employees who are serving employment probation in a position with supervisory or managerial duties are required to complete the required supervisory training during their probationary period.

Employees who are not serving employment probation, but are appointed or re-allocated into a position with supervisory or managerial duties, must complete the required supervisory training within ninety (90) calendar days of their appointment or re-allocation.

3. a. Employees who completed the required training within the three years prior to the effective date of appointment are not required to take that training again.
- b. All employees will be expected to complete refresher training on certain training topics.
4. City departments and agencies are expected to make sure their employees meet the training requirements of this rule.

D. Extension of employment probation:
(Revised May 22, 2018; Rule Revision Memo 40D)

Appointing authorities may extend an employee's employment probation for a period not to exceed an additional six (6) months after the original end of probation date. Notice of the extension shall be given to the employee and received by the OHR prior to the employee's end of probation date.

Employment probation for employees in the Aviation Emergency Dispatcher, Emergency Communications Operator, Police Dispatcher, and Staff Probation Officer classifications may only be extended for a period not to exceed an additional three (3) months after the original end of probation date.

E. End of employment probation:
(Revised May 22, 2018; Rule Revision Memo 40D)

1. Supervisors are encouraged to evaluate employee performance and discuss it with the employee during the employment probationary period so that employees are fully informed of their progress.
2. An employee's successful completion of an employment probationary period shall be documented by the department or agency and the documentation shall be sent to the employee and OHR.
3. a. If a department or agency is going to separate an employee during employment probation, a written notice of separation or dismissal shall be given to the employee on or before the employee's last day of employment probation and last day as a City employee.
- b. An employee who has completed the required employment probationary period and the training programs required by this rule shall attain career status unless a written notice of the extension of the employee's employment probation, or of the employee's separation or dismissal, has been given to the employee and has

been received at the OHR prior to the end of the employment probationary period.

- F. An employee serving employment probation may be separated in accordance with Rule 16 **DISCIPLINE AND DISMISSAL** or demoted to a position with less responsibility in accordance with this Rule 5.
- G. An employee who is appointed to another position during employment probation shall begin a new employment probationary period.

5-35 Career Status

- A. Employees attain career status through:
 - 1. Successful completion of-the employment probationary period, and the training programs required by this Rule 5; or
 - 2. Reinstatement after lay-off.
- B. An employee in career status:
 - 1. May only be disciplined or dismissed for cause, in accordance with Rule 16 **DISCIPLINE AND DISMISSAL**;
 - 2. Is entitled to lay-off protection specified in Rule 14 **SEPARATION OTHER THAN DISMISSAL**; and
 - 3. May have continuous service credits earned prior to layoff restored if such employee is reinstated or re-employed while still on the reinstatement list.

5-36 Senior Command Staff Status

- A. Every employee in a position in a classification in the Deputy Sheriff pay table who is appointed to a position in the Deputy Sheriff Major or Deputy Sheriff Division Chief classifications after May 31, 2014 shall hold Senior Command Staff status for the duration of the appointment and shall not serve a probationary period. However, such employee shall retain career status attained in his or her former classification and be entitled to return to a position in that classification when the employee's Senior Command Staff status ends. (Revised April 9, 2021; Rule Revision Memo 66D)
- B. An employee in Senior Command Staff status retains the rights, privileges, and benefits the employee had by virtue of his or her status prior to the appointment, except that the employee:
 - 1. May be returned to a position in his or her former classification at any time. Upon returning, the employee shall receive the same rate of pay he or she was receiving prior to his or her appointment to a position in the Deputy Sheriff Major or Deputy Sheriff Division Chief

classifications (Senior Command Staff position), after taking into account the effect of any pay changes or classification changes to the employee's former position and classification that occurred during the period between the appointment and the return; and

2. May not grieve or appeal his or her removal from a Senior Command Staff position.

Employees who were appointed to Senior Command Staff positions prior to June 1, 2014 shall retain career status attained in that position and shall not be considered to have Senior Command Staff status.

Section 5-40 Medical Examinations Following a Conditional Offer of Employment
(Revised April 9, 2018; Rule Revision Memo 36D)

5-41 Medical Groups

All classifications in the Career Service shall be allocated to a medical group by the City's Risk Management Office. The medical groups are as follows:

- A. Sedentary (1): Work that involves lifting no more than 10 pounds at a time.
- B. Light (2): Work that involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds.
- C. Medium (3): Work that involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds.
- D. Heavy (4): Work that involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds.
- E. Very Heavy (5): Work that involves lifting objects more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more.

5-42 Adoption of Medical Standards

Medical criteria for each medical group or for individual classifications within a medical group shall be proposed by the Medical Director at the Center for Occupational Safety and Health at Denver Health or by another designated provider (as defined in Chapter 18, Article VII of the Denver Revised Municipal Code – Treatment of Occupational Injury or Disease) and approved by the City's Risk Management Office. Medical criteria must be job-related and consistent with business necessity. Medical criteria shall be used as a guide in determining an applicant's ability to perform the essential physical functions of a position either with or without reasonable accommodations.

5-43 Medical Examinations

- A. Whether an applicant is required to submit to a medical examination after receiving an offer of employment is set by the applicable job classification specification. The offer of employment shall be conditioned on the results of the medical examination. The examination shall be administered by the Center for Occupational Safety and Health at Denver Health or by another designated provider (as defined in Chapter 18, Article VII of the Denver Revised Municipal Code – Treatment of Occupational Injury or Disease). The examination shall be completed after the conditional offer of employment has been given to the applicant and before the first day of work.
- B. If it is determined that the applicant is unable to perform the essential functions of the position with or without reasonable accommodations, the offer of employment shall be rescinded.

Section 5-50 Dual Incumbency

Subject to approval by the Budget and Management Office, or its designee, an employee may be appointed to occupy a position currently occupied by another employee for a period not to exceed three (3) months. If it is desired to continue such an arrangement for more than three months, it shall be done by the creation of a limited position rather than dual incumbency in a single position.

Section 5-60 Dual Employment

The following rules shall apply as to dual employment in the Career Service:

- A. Since a position is by definition an aggregate of duties to be performed by one (1) person, an employee may occupy only one (1) full-time position.
- B. An employee may occupy more than one (1) part-time position, more than one (1) on-call position, or a combination of part-time and on-call positions provided that the total time worked does not exceed the equivalent of a full-time position.

Section 5-70 Compliance with the Immigration Reform and Control Act of 1986

5-71 Policy

The policy of the Board is to conform to the provisions of Federal and Colorado immigration law, including but not limited to the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and regulations based upon these laws.

5-72 New Hires

No person hired on or after May 21, 1987 shall be employed for more than three (3) working days unless such employee has submitted to the OHR the documentary evidence of identity and authorization to work required by Federal immigration law.

5-73 Penalty

In accordance with the requirements of Federal immigration law, any employee failing to comply with this section of Rule 5 **APPOINTMENTS AND STATUS** shall be terminated immediately.

RULE 7
CLASSIFICATION AND COMPENSATION
(Effective September 25, 2015; Rule Revision Memo 14D)

Purpose Statement:

The purpose of this rule is to provide a process and create a framework to ensure like pay for like work within the City's merit-based personnel system through the use of a systematic method of individual or group classification reviews, and to provide generally prevailing compensation to City employees.

Section 7-10 Definitions

(Revised January 3, 2017; Rule Revision Memo 23D)

- A. Allocation: The formal process of assigning a new position to its proper classification on the basis of the duties to be performed and the responsibilities to be exercised.
- B. Audit: A fact-finding investigation of the work performed by the incumbent of a given position, including work processes, materials processed, actions taken, tools used, supervision exercised, and supervision received for the purpose of analyzing the kind and level of duties and responsibilities of the position.
- C. Benchmark classification: A classification title for which external pay data can be readily collected. (Revised April 9, 2021; Rule Revision Memo 66D)
- D. Business title: The functional or working title of a position, which may differ from the classification title, used in a given agency for operating purposes, or by the Office of Human Resources ("OHR") for recruiting purposes. (Revised January 3, 2017; Rule Revision Memo 23D)
- E. Classification: One or more positions so nearly alike in the essential character of their duties and responsibilities that the same pay grade, title and specification can be applied, and such that they can fairly and equitably be treated alike under like conditions for all other personnel purposes.
- F. Classification specification: A written statement that sets forth the characteristic duties and responsibilities that distinguish a given classification from other classifications, and the minimum education, experience and licensure/certification requirements necessary for appointment to a position in that classification. Classification specifications are intended to provide a basic framework for recruitment, compensation, performance management and employee development. They also provide a means of determining the allocation of work, lines of authority, and other relationships between positions.
- G. Classification title: The designation of a classification which becomes the official title of all positions allocated to that classification.
- H. Classification and pay plan: A list of classification titles and attendant pay rates covering all classifications in the Career Service and all classifications not in the Career Service except Charter officers, the ranks of the classified service in the Police and Fire Departments, Deputy Sheriffs, Deputy Sheriff Majors, Deputy Sheriff Division Chiefs, and the Undersheriff

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- I. Job family: Groupings of classifications that are similar in the nature of the work performed. (Revised April 9, 2021; Rule Revision 66D)
- J. Market analysis: A study of external compensation data that may result in changes to the pay tables and/or market adjustments. (Revised April 9, 2021; Rule Revision 66D)
- K. Market analysis adjustment: A change in base pay resulting from an annual market analysis recommendation adopted by City Council. (Revised April 9, 2021; Rule Revision 66D)
- L. Market survey: The collection, analysis and reporting of external pay data for a number of benchmark classifications. (Revised April 9, 2021; Rule Revision 66D)
- M. Pay grades: Identifying numbers for pay ranges within a pay table. (Revised April 9, 2021; Rule Revision 66D)
- N. Pay ranges: The range of pay in a pay grade beginning at the range minimum and extending to the range maximum of the pay grade.
- O. Pay tables: A listing of the pay grades and the corresponding pay ranges. (Revised April 9, 2021; Rule Revision 66D)
- P. Position: The aggregate composition of duties and responsibilities performed by one employee.
- Q. Provisional classification: When an interim adjustment to the classification and pay plan that results in a new classification, or changed pay grade, title, or overtime eligibility for an existing classification, and the change has been approved by the OHR Executive Director or by the Career Service Board (“Board”) but not yet by City Council, that classification shall be known as a provisional classification. Provisional classifications may be utilized without City Council approval for up to six months after the effective date of the OHR Executive Director’s or Board’s approval or until the City Council ratifies or disapproves the change. (Revised April 20, 2018; Rule Revision Memo 39D)
- R. Re-allocation: The formal process of assigning an existing position to its proper classification on the basis of the predominant duties performed and the responsibilities exercised.

Section 7-20 Classification and Pay Plan

The OHR is responsible for developing, maintaining, and administering classifications and attendant pay plans for all positions covered by the classification and pay plan.

7-21 Changes to the Classification and Pay Plan (Revised April 20, 2018; Rule Revision Memo 39D)

- A. For changes to the classification and pay plan that require a public hearing pursuant to Rule 2-31 A, the OHR Executive Director shall make a recommendation to the Board.

- B. Recommended changes to the classification and pay plan proposed by the OHR Executive Director to the Board as required in Rule 2-31 A shall be approved, modified or rejected by the Board after a public hearing as provided in Rule 2 **CAREER SERVICE BOARD**.
- C. Any changes to the classification and pay plan that are approved by the Board following a public hearing pursuant to Rule 2-31 A shall require submission to the City Council for approval following the public hearing.
- D. The OHR Executive Director is authorized to make the following interim adjustments to the classification and pay plan, subject to the exceptions provided in subparagraph 6:
 - 1. Abolishment of any existing classification;
 - 2. Creation of any new classification or classifications;
 - 3. Classification title changes;
 - 4. Classification overtime eligibility changes; or
 - 5. Classification pay grade increases.
 - 6. Interim adjustments shall not be authorized with regard to proposed changes to the classification and pay plan that involve:
 - a. Twenty-five (25) or more employees;
 - b. The creation of five (5) or more classifications at one time;
 - c. Employees in three (3) or more city departments or agencies; or
 - d. A projected annual cost of fifty thousand dollars (\$50,000.00) or more to the city in the first full year of implementation;
- E. Notice of the proposed interim changes to the classification and pay plan under this subparagraph D shall be given at least thirteen (13) calendar days prior to approval by the OHR Executive Director. Such interim changes shall be submitted to the Board for review and to City Council for ratification on a semi-annual basis.

7-22 Changes to Classification Specifications

Changes to classification specifications that do not involve changing classification titles and/or attendant pay rates do not require City Council approval, and may be made by the OHR Executive Director without a public hearing before the Board.

Section 7-30 Classification of Positions

7-31 Responsibility for the Establishment of Positions and Assignment of Duties

Appointing authorities may initiate the creation of new positions and have the responsibility to assign duties to such positions. Appointing authorities may also change duties that are assigned to positions under their authority regardless of whether those positions are filled or vacant. Duty assignments may be temporary or regular, incidental or essential, and may include changes in location of work and changes in equipment and tools.

7-32 Allocation of New Positions

Every position covered by the classification and pay plan shall be allocated to a classification in that plan. Such allocation shall be made by the OHR on the basis of the predominant duties of the position and in accordance with generally accepted personnel standards and procedures and as set forth in this Rule 7.

7-33 Re-Allocation of Existing Positions

- A. When the duties of an existing position are changed to the extent that the position is more similar to positions in other classifications than to positions in its current classification, the position should be re-allocated to a more appropriate classification in accordance with this Rule 7.
- B. In order to maintain the classification and pay plan, the OHR may re-allocate:
 - 1. Vacant positions on the basis of the essential duties of the position; and
 - 2. Filled positions by conducting audits or classification studies.
(Revised April 9, 2021; Rule Revision Memo 66D)

7-34 Audits

(Revised July 21, 2022; Rule Revision Memo 79D)

- A. An appointing authority may submit a request for, or the OHR may initiate, an audit of a filled position to determine if it is correctly classified, when there has been:
 - 1. A significant change in the type or level of duties and responsibilities;
 - 2. A re-organization affecting a number of employees, which may involve significant additions of new equipment, or substantial changes in methods or procedures; or
 - 3. A classification study resulting in changes to classification specifications.
- B. Requests for individual position audits must be made using the OHR Individual Position Audit Request Form and cannot be implemented after the last Sunday of November nor before the first Sunday of March.

Appointing authorities may request an exception outside of this period if there are extraordinary or compelling operational needs. Exceptions require the approval of the OHR Executive Director.

- C. When an appointing authority requests re-allocation of a position to a supervisory or managerial classification from a classification that is not a supervisory or managerial classification the request shall include a list of the position numbers, classification titles, and names of subordinate staff.
- D. Audit requests will not be granted in the following situations:
 - 1. For limited positions that are not budgeted or not anticipated to be budgeted past the fiscal year in which the audit was requested;
 - 2. For on-call positions;
 - 3. When there is a vacant position in the incumbent's work unit which is in the classification to which the audit request seeks to re-allocate the incumbent's position;
 - 4. For any positions currently included in a classification study; however, an exception may be granted upon OHR Executive Director approval based on the circumstances surrounding the audit request;
 - 5. As an alternative to promotion;
 - 6. As a substitute for disciplinary procedure;
 - 7. The incumbent has not passed the applicable assessment or test for the proposed classification; or
 - 8. The incumbent has not completed the required training for the proposed classification.
- E. An employee may petition an appointing authority to reconsider a decision not to request an audit of the employee's position and may send a copy of the petition to the OHR Executive Director. The OHR may choose to initiate an audit or classification study if warranted under this Rule 7.

7-35 Classification Studies (Revised April 9, 2021; Rule Revision Memo 66D)

- A. The OHR may initiate and conduct classification studies of multiple positions in one or more classifications in order to ensure that the classification and pay plan continues to provide generally prevailing compensation to employees holding those positions.
- B. When an appointing authority creates a new position or changes the duties assigned to an existing position, those positions shall be allocated or re-allocated to the appropriate classification simultaneously with the implementation of the classification study whenever possible.

7-36 Effect of Re-allocation on Incumbents

- A. An employee whose position is re-allocated must meet the minimum education, experience, and licensure/certification requirements of the new classification. The OHR Executive Director may substitute other appropriate factors for the minimum education and experience requirements of the position, based on the circumstances presented by a particular situation, but may not make a substitution for licensure or certification requirements.
- B. An incumbent with career status who has been found eligible to remain in the re-allocated position shall acquire career status in the new classification as of the effective date of the re-allocation. If the incumbent has probationary status, the employee shall complete the remainder of such probationary period before attaining career status in the new classification.

7-37 Effective Dates (Revised April 9, 2021; Rule Revision Memo 66D)

- A. If it is determined that changes to the classification and pay plan are necessary, the effective date of any resulting changes to the classification and pay plan shall be the beginning of the first work week following approval by the Mayor or by the City Council over the Mayor's veto. Provisional classifications resulting from changes to the classification and pay plan may be used upon approval by the OHR Executive Director or Board, but use for longer than six months is contingent upon City Council approval. (Revised April 20, 2018; Rule Revision Memo 39D)
- B. If a position is to be re-allocated as a result of an audit or classification study without requiring changes to the classification and pay plan, the effective date shall be the beginning of the first work week following the classification decision by the OHR.

Section 7-40 Requests for Administrative Review (Revised April 9, 2021; Rule Revision Memo 66D)

An appointing authority may ask the OHR Executive Director for an administrative review of a classification decision within ten (10) calendar days of the date of notice of the audit or classification study results. The OHR Executive Director or designee shall review the decision and provide a written response to the appointing authority.

Section 7-50 Compensation Policy (Revised April 9, 2021; Rule Revision Memo 66D)

The policy of the City and County of Denver is to provide generally prevailing compensation to City employees as provided by the City Charter and the Denver Revised Municipal Code ("DRMC"). This compensation policy is designed to attract, retain and motivate employees in order to support and reinforce the City's vision, values, and strategic business goals. To implement this compensation policy the Office of Human Resources ("OHR") will:

- A. Conduct market analyses to ensure the City's external market competitiveness;
- B. Provide like pay for like work within classifications; and
- C. Utilize pay for performance plans.

Page issuance date: April 9, 2021

Section 7-60 Establishing and Maintaining Pay Tables

(Revised May 31, 2017; Rule Revision Memo 27D,
Revised April 9, 2021; Rule Revision Memo 66D,)

- A. The OHR shall establish the following pay tables in order to facilitate the City's compensation policy:
1. Non-exempt salary tables: applicable to those classifications not exempt from overtime pursuant to the provisions of the Fair Labor Standards Act (FLSA);
 2. Community rate tables: applicable to certain classifications comprised solely of on-call positions used on a seasonal basis or in the sports and entertainment field which do not have traditional year-round or seasonal schedules. These classifications are non-exempt under the FLSA;
 3. Training and intern tables: applicable to trainee or intern classifications; and (Revised June 24, 2019; Rule Revision Memo 53D)
 4. Exempt salary tables: applicable to those classifications exempted from overtime under the FLSA.
- B. Classifications shall be assigned to a pay grade within the appropriate pay table.

Section 7-70 Pay and Benefit Survey Process

7-71 Establishing Pay for Classifications

- A. The pay for a classification shall be set at generally prevailing rates of pay for comparable jobs using the market survey process described below.
- B. The OHR shall perform an annual market analysis to determine what should be recommended for pay tables and/or market adjustments covered by the classification and pay plan (as defined in this Rule 7). (Revised April 9, 2021; Rule Revision 66D)
- C. If market survey data are inadequate or inappropriate for a statistical analysis, pay for a classification will be determined based on internal relationship comparisons to other City and County of Denver classifications according to practices established by the OHR (see Appendix).

7-72 Market Surveys

In order to provide generally prevailing compensation to employees, the OHR shall use market surveys which include a sample of public and private sector employers and jobs throughout the local market or other appropriate geographical areas.

- A. Benchmark classifications shall be identified in each job family. Market data shall be used to analyze these classifications in order to determine what market analysis adjustments, if any, should be recommended. (Revised April 9, 2021; Rule Revision 66D)

- B. The local market shall be defined as the “Denver Metropolitan Area” which includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson counties.
- C. The use of other geographical area data will be determined on a case-by-case basis for a classification. When other geographic areas are selected to be used in a survey, several factors are considered such as, but not limited to, the market where such jobs are recruited for, comparable organizations, populations and cost of living factors.
- D. Whenever salary and related information is furnished to the OHR on the condition that such material remains confidential, the individual pay data in such surveys shall not be disclosed.
- E. The OHR shall establish written criteria for selecting surveys, which must be published and followed. Before changing the criteria for selecting surveys, the OHR must inform the Board at a public meeting (see Appendix).

7-73 Implementation of Market Analysis Recommendations
(Revised July 21, 2022; Rule Revision 79D)

- A. In accordance with Rule 2, the Career Service Board (“Board”) shall hold a public hearing to determine whether to accept, reject, or modify the market analysis recommendations.
- B. The Board provides their recommendations to the Mayor and the City Council as required by ordinance.
- C. The City Council and the Mayor may accept, reject, or modify the recommendations.
- D. The OHR shall implement the market analysis pay table adjustments as approved or modified by the City Council and the Mayor.

When an adjustment is applied to the pay tables, the range minimum and range maximum shall be modified by a consistent percentage increment.

Each employee in the pay table’s adjusted pay grades shall maintain their current rate of pay and classification, except that no such employee shall receive less than the range minimum of the adjusted pay grade.

These adjustments shall take effect on January 1 of the immediate year following the year in which the recommendation is made.

7-74 Employee Benefits

- A. Upon request of the Mayor, City Council, or the Board, the OHR Executive Director shall survey and recommend changes to employee benefits as necessary to attract and retain a qualified and competent workforce and to maintain the City’s policy to provide generally prevailing compensation to employees.

- B. The Board shall conduct at least one public hearing on any proposed changes to employee benefits prior to the OHR Executive Director making any recommendations to the Mayor and City Council.

APPENDIX 7.A.

**OHR PRACTICES FOR DETERMINING INTERNAL RELATIONSHIP COMPARISONS
BETWEEN CITY AND COUNTY OF DENVER JOB CLASSIFICATIONS
(REFERRED TO IN RULE 7-71 C.)**

(Revised April 9, 2021; Rule Revision Memo 66D)

These comparisons will include, but not be limited to items such as the:

1. Duties and responsibilities of the job;
2. Level of decision making;
3. Level of supervision exercised;
4. Level of complexity;
5. Minimum qualifications.

This Appendix is provided for informational purposes and is not considered a part of the Rules.

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APPENDIX 7.B.

CRITERIA FOR SELECTING MARKET SURVEYS (REFERRED TO IN RULE 7-72 E.)

(Revised April 9, 2021; Rule Revision Memo 66D)

The following criteria shall be used to select published surveys:

1. The survey should provide written documentation of the methodology used to select the sample of the organizations surveyed; match the type of work performed; and collect, analyze, and report the data.
2. The methodology outlined should meet professionally accepted compensation standards.
3. The survey should provide written documentation showing that only organizations meeting criteria established in these rules were surveyed.
4. The survey should provide a list of the organizations surveyed.
5. The survey must provide descriptions of work in sufficient detail to ensure comparable jobs are being matched.
6. The survey must provide an effective date for all data reported.
7. The survey should provide pay range and structure data, actual rates of pay by quartile, median, and/or weighted average; and the number of organizations and rates the results represent.
8. The number of firms surveyed must provide a large enough sample to be considered representative of the generally prevailing wage.

The OHR is required to establish written criteria for selecting market surveys by the Career Service Rules. These criteria must be published in the Appendix to this Rule 7 and followed. Before changing this Appendix 7.B., the OHR must inform the Board at a public meeting.

RULE 9
Pay Administration

Purpose statement:

The purpose of this rule is to explain the establishment and administration of pay practices (except merit increases and merit payments), and hours of work.

Section 9-5 Definitions

- A. Classification series: The arrangement in sequence of classes that are alike in kind but not in level. For the purposes of a market adjustment within the salary range, a classification series shall include first line supervisors and lead workers.
- B. Demotion: An appointment of an employee to a position in a lower classification as defined in Career Service Rule1 **DEFINITIONS**.
- C. Emergency: An emergency shall include the following events: fire, flood, catastrophe, severe weather conditions that impact public safety or essential services; other unforeseeable emergency where a station must be staffed and another employee is not available for work; or an occurrence affecting the general public which requires immediate action. A declared emergency shall mean an emergency declared by the Mayor or an appointing authority that complies with the definition of emergency stated above.
- D. Essential city services: The determination of what constitutes an essential City service shall be made at the discretion of appointing authorities.
- E. Market Conditions: Factors and trends in the market as determined by a compensation analysis that may affect compensation rates such as the supply and demand of workers.
- F. Pay Factors: When setting pay, appointing authorities, in alignment with OHR, shall base their decision on the following pay factors, which are not listed in any particular rank order: (Revised August 19, 2021; Rule Revision Memo 69D)
 - 1. Related experience.
 - 2. Previous work record.
 - 3. Education and/or certification.
 - 4. Internal equity.
 - 5. Level of responsibility of accepted; and
 - 6. Merit system.
- G. Promotion: An appointment of an employee to a position in a higher classification as defined in Career Service Rule 1 **DEFINITIONS**.
- H. Re-allocation: The formal process of assigning an existing position to its proper classification

on the basis of the duties performed and the responsibilities exercised.

- I. Reinstatement: An appointment of a laid off employee resulting from referral from a reinstatement list as defined in Career Service Rule 1 **DEFINITIONS**.
- J. Transfer: An appointment of an employee to a position in a lateral classification as defined in Career Service Rule 1 **DEFINITIONS**.

Section 9-6 Designees

Appointing authorities, including the Office of Human Resources (“OHR”) Executive Director, may delegate any authority given to them under this Rule 9 to a subordinate employee.

Section 9-10 Pay Practices

- A. Pay practices include, but are not limited to, items such as pay when first employed, changes in pay resulting from changes in position or classification, differentials, overtime pay, standby pay, merit increases and merit payments.
- B. The kind and level of pay practices for Career Service employees shall be determined by the Career Service Board (“Board”) following a survey of other employers or based on the City’s needs.
- C. Applicability to Deputy Sheriffs: None of the provisions of this Rule 9 shall apply to employees who hold positions in classifications in the Undersheriff pay tables. (Revised April 9, 2021; Rule Revision Memo 66D)

Section 9-20 Pay When First Employed

- A. An appointing authority, in alignment with OHR, should hire an employee at the range minimum if the employee minimally meets the position requirements.
- B. An appointing authority, in alignment with OHR, may set pay for a new employee higher than the range minimum and up to the range midpoint if the appointing authority determines that one or more of the pay factors defined in this Rule 9 **Pay Administration** justify such a starting salary.
- C. An appointing authority, in alignment with OHR, may set pay for a new employee higher than the range midpoint and up to the range maximum if the applicant substantially exceeds the minimum requirements for the position and the appointing authority determines that one or more pay factors defined in this Rule 9 **Pay Administration** justify such a starting salary.

Section 9-30 Changes in Classification and Pay

- A. A change in an employee’s classification may occur through promotion, transfer, demotion, or re-allocation.
- B. Retroactive pay changes shall not extend into the prior fiscal year, unless approved by the OHR Executive Director or designee. (Revised November 7, 2016; Rule Revision Memo 22D)

- C. An employee must pass probation before they may apply for a promotion or a transfer to a position in the same or another classification.

9-31 Promotion

Upon promotion an employee's pay shall be set by the appointing authority in accordance with the pay factors defined in this Rule 9. The pay shall not be lower than the range minimum, or greater than the range maximum of the pay range for the new classification. The increase in pay from the promotion shall be up to 15% or the range minimum, whichever is greater. When setting the increase in pay, internal equity shall be considered for other substantially similar workers.

9-32 Transfers

When an employee transfers positions from one classification to another classification with the same pay range minimum, the employee's pay shall be set by the appointing authority, in alignment with OHR, in accordance with the pay factors defined in this Rule 9.

If the employee's pay upon transfer will be more than the range maximum of the new pay range of the new classification the employee's pay shall be set at the range maximum of the pay range of the new classification.

An employee transferring to a position within the same classification for budgetary reasons shall not receive an increase in their pay. Otherwise, the increase in pay shall not be more than 5% if transferring to a different classification at the same pay grade.

An employee must remain in the position into which they were hired until they have passed probation.

9-33 Demotion

(Revised August 6, 2018; Rule Revision Memo 44D)

A. Voluntary demotion:

1. A voluntary demotion is a demotion initiated through the requestor application of an employee.
2. When an employee voluntarily demotes, pay shall be set by the appointing authority in accordance with the pay factors defined in this Rule 9, and shall not be lower or decreased by more than the range minimum, or greater than the range maximum of the pay range for the new classification.

Before the pay can be set at a rate lower than the employee's current pay rate, the employee must agree to the reduction. If the parties cannot agree on the amount of the reduction, the voluntary demotion will not occur.

B. Involuntary demotion:

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 an eight percent (8.0%) reduction shall be required, however pay shall not be lower than the range minimum or greater than the range maximum of the pay range for the new classification.

9-35 Re-allocation

A. When an individual position is re-allocated to another classification at the request of the appointing authority pursuant to Rule 7-34, the incumbent employee shall receive the same pay as before the re-allocation, subject to the following exception:

- 1. If the new classification has the same or a higher pay grade, the incumbent employee's pay shall be reviewed by OHR, in consultation with the appointing authority, as part of the reallocation process.

If, as a result of such a review, OHR and the appointing authority both agree that the employee's pay should be increased in accordance with Rule 9-39, the reallocation and accompanying increase in pay shall take effect on the same date. In no case shall employees be paid less than the range minimum of the pay range of the new classification.

B. When a classification is changed to a different pay grade, and/or pay range as the result of a classification study pursuant to Rule 7-35, the employees in that classification shall receive the same pay as before the re-allocation.

- 1. If the employee's current pay is less than the range minimum of the pay range of the new classification, the employee's pay shall be set at the range minimum of the pay range of the new classification.
- 2. If the employee's current pay is higher than the range maximum of the pay range of the new classification, the employee's pay shall remain the same until such time that either:

- a. The employee changes positions; or
- b. The pay range of the new classification is adjusted to the point that the range maximum exceeds the employee's current pay.

- 3. If the new classification has the same or a higher pay grade, the incumbent employee's pay may be reviewed by OHR, in accordance with Rule 9-39 and the process associated with 9-39, in consultation with the appointing authority, as part of the reallocation process.

9-36 Reinstatement Appointment

Upon reinstatement after layoff, an employee's pay shall be set at the rate of pay the employee received immediately prior to such layoff.

9-37 Counteroffer (Revised April 9, 2021, Rule Revision Memo 66D):

- A A counteroffer may be made for any of the reasons listed below:
1. To retain an employee whose skills, knowledge or abilities are deemed essential to the mission of the City or a department or agency.
 2. To avoid recruiting and training costs when those costs clearly exceed the costs of a counteroffer.
 3. When it has been determined that turnover rates in a classification exceed the calculated turnover rate for that job family, or classification and pay has been determined to be a significant cause; or,
 4. When the vacancy rate within a classification reaches a level where additional loss of personnel may interfere with the City's ability to provide adequate levels of services to the public.
- B An appointing authority may make a counteroffer to an employee when the following conditions have been met:
1. The base salary and employee benefits the employee will receive at the prospective employer are greater than the base salary and employee benefits the employee is currently receiving from the City.
 2. The counteroffer does not exceed the range maximum of the pay range the employee occupies at the time the offer is extended (Revised October 17, 2010; Rule Revision Memo 47C).
 3. The prospective employer is not a department or agency of the City; and
 4. The appointing authority has verified the authenticity of all job offers which constitute the basis for a counteroffer.
- C The appointing authority shall submit a copy of the written offer of employment from the prospective employer with the Personnel Action Form.

9-38 Interim pay practices

- A The OHR Executive Director may, on a temporary basis, create or temporarily adjust a pay practice for any type of employee (e.g. career service, on-call, etc.), to increase pay, if any of the following conditions exist:
1. **Recruitment and Retention Difficulties:** If the following factors apply to one or more classifications within an agency or division of an agency:

- a. Numerous vacancies exist in the classification(s) that will be affected by the proposed pay practice.
 - b. Recruitment has not been effective.
 - c. Retention rate is low; and
 - d. Market driven personnel shortages in the classification(s) are causing difficulty in fulfilling an essential mission of the City.
2. City-wide Emergency: The Mayor has declared a city-wide emergency and the employees' regular or temporarily assigned duties are critical to address the emergency; or
 3. Mayoral Request: The Mayor requests the OHR Executive Director to create or adjust the pay practice on the basis of exigent circumstances or compelling operational needs.
- B. At the next regular Board meeting the OHR Executive Director must inform the Board of the interim pay practice and the basis for the interim pay practice. If the Board does not agree with the interim pay practice then, upon a majority vote of a quorum of the Board members attending the meeting, the interim pay practice shall be suspended immediately or within a specified time period designated by the Board.
- C. An interim pay practice shall remain in effect for the time specified by the OHR Executive Director or the Board or for a period of six (6) months, whichever is shorter, and may be extended by the OHR Executive Director for such increments of time not to exceed two (2) years total. The OHR Executive Director shall follow the process set forth in subparagraph B, above, with respect to each approved extension.

9-39 Pay adjustment within the pay range

- A. An appointing authority may request a pay equity review for consideration to have an employee's pay adjusted within that employee's current pay range, as long as the purpose is to eliminate a pay disparity for which an employee's pay is being compared with the pay of another employee who is performing substantially similar work that is:
1. In the same classification; or
 2. In the same classification series; or
 3. In a classification within the same job family performing comparable types of duties; or (Revised April 9, 2021, Rule Revision 66D)
 4. Subordinate to the existing employee in that employee's chain of command.

If OHR does not find an existing pay disparity, then the adjustment shall not be implemented.

- B. The appointing authority's request shall explain:
1. The reason the pay inequity exists between or among the employee(s) performing substantially similar work including information about how pay factors (as listed in Rule 9-5 F and/or Appendix 7.A.) have contributed to the pay inequity; and
 2. How the employee's duties are substantially similar to the identified comparator; and
 3. If applicable, why employees in the same classification in the same work group are not being considered in the request. This explanation should include information about how the excluded employees are not affected by the pay factors as listed in Rule 9-5 F and/or Appendix 7.A.
- C. Substantially similar work most often exists within the employee's immediate work group but may be found within the employee's department or agency.
- D. A pay equity adjustment within the pay range requires the approval of the OHR Executive Director. The effective date of any such pay adjustment shall be the beginning of the work week following approval by the OHR Executive Director.
- In the case of extraordinary circumstances, and with the approval of the OHR Executive Director, the effective date of the pay adjustment may be for a retroactive date at the beginning of a work week. However, no retroactive pay adjustment shall extend into the prior fiscal year.
- E. Pay adjustment requests cannot be implemented after the last Sunday of November nor before the first Sunday of March. (Revised July 21, 2022; Rule Revision Memo 79D)

Section 9-40 Pay Adjustment for On-Call Employees
(Revised April 9, 2018; Rule Revision Memo 38D)

On-Call employees are not eligible for merit increases and merit payments. However, an appointing authority may grant on-call employees who have served a minimum of three hundred (300) hours in the year preceding the date of the proposed increase a pay increase not to exceed the average percentage merit increase established by the annual appropriation ordinance and **Rule 13 PAY FOR PERFORMANCE** for the year of the proposed increase. The pay increase permitted under this rule shall not exceed the range maximum of the applicable range and shall not be granted more than once in a year period from the pay increase effective date.

Section 9-50 Pay Differentials and Pay Practices
(Re-numbered December 21, 2012; Rule Revision Memo 66C)

951 Shift Differential
(Revised March 11, 2019; Rule Revision Memo 51C, Revised April 9, 2021, Rule Revision 6D)

A. Employee eligibility:

1. Employees in classifications in non-exempt pay tables are eligible for shift differential, unless the employee is eligible for the health care differential as provided in this Rule 9 **PAY ADMINISTRATION**.
 2. Employees in classifications in exempt pay tables are not eligible for shift differential, unless the employee is in a classification:
 - a. In which the OHR Executive Director has approved overtime based on community practice (unless also eligible for the health care differential as provided in this Rule 9 **PAY ADMINISTRATION**); or
 - b. That is a first-line supervisory classification and the employee's primary duties include directly supervising employees who have no subordinate supervisors and who are receiving shift differential for the time the employee (first-line supervisor) is supervising them.
 3. Employees in classifications in community rate pay tables are not eligible for shift differential. (Revised May 31, 2017; Rule Revision Memo 27D)
 4. The OHR Executive Director, upon the request of an appointing authority, may allow a department or agency to exclude otherwise eligible employees from receiving shift differential based on community practice. Requests based on other reasons require submission by the OHR Executive Director and approval by the Board.
- B. The following rates shall be paid for shift differential:
1. Night rate: Twelve percent (12%) of the current hourly rate of pay.
 2. Evening rate: Seven percent (7%) of the current hourly rate of pay.
- C. Shift differential shall be paid for all hours worked by an eligible employee in a workday under the following conditions:
1. If at least half of the hours worked occur between 11 p.m. and 7 a.m. the employee shall receive the night rate.
 2. If at least half of the hours worked occur between 3 p.m. and 11 p.m. the employee shall receive the evening rate, unless the other half of the hours worked occur between 11 p.m. and 7 a.m., in which case the employee will receive the night rate.
 3. If neither subparagraph 1 or 2 are applicable, but at least half of the hours worked occur between 3 p.m. and 7 a.m., the employee shall receive the applicable rate for the period in which a majority of the hours occur. If these hours are evenly divided between 3 p.m. and 11 p.m. and 11 p.m. and 7 a.m., the employee shall receive the night rate.
 4. If the employee's regularly scheduled shift is eligible for shift differential and that employee's shift is extended due to no fault of their own, such as through mandated overtime or late relief, and such extension would

cause the employee to lose shift differential eligibility, the shift differential shall still be applied to the regularly scheduled shift worked.

D. Shift differential shall not be paid during any period of paid or unpaid leave.

952 Equipment Differential

A Eligibility:

1. Equipment differential shall be paid to employees who are temporarily assigned to operate equipment, which is at a higher-level classification than the employee's current classification, and who are not receiving additional pay for a work assignment outside of job classification.
2. Employees in on-call positions including classifications in community rate pay tables shall be entitled to equipment differential. (Revised May 31, 2017; Rule Revision Memo 27D, Revised April 9, 2021; Rule Revision 66D)

B. Equipment differential shall be paid under the following conditions:

1. The equipment being operated is on the Board's approved equipment list for payment of equipment differential.
2. Assignment in the higher-level classification must last for less than thirty (30) days. If all authorized limited positions for a term of nine (9) months or less are filled, the thirty (30) day limit is waived.

C. The pay shall be ten percent (10%) of the current hourly rate of pay for each hour worked in the next higher-level classification. The pay shall be fifteen percent (15%) of the current hourly rate of pay for each hour worked in the second higher level classification and above.

D. The total base pay for any pay period, excluding overtime and shift differential, shall not exceed the range maximum of the higher-level classification (Revised October 17, 2010; Rule Revision Memo 47C).

953 Health Care Differential

A. Career Service employees who are employed by the Denver Health and Hospital Authority ("DHHA") in classifications in the Healthcare job family are eligible for health care differentials paid to comparable classifications at DHHA. (Revised July 31, 2015; Rule Revision Memo 12D, Revised April 9, 2021; Rule Revision Memo 66D)

B. The differentials, eligibility criteria, and rates shall be established by DHHA.

954 RESERVED FOR FUTURE USE

(Revised August 6, 2018; Rule Revision Memo 44D)

955 Standby Pay
(Revised July 25, 2006; Rule Revision Memo 11C)

- A. Appointing authorities may schedule employees to be on standby duty only when there is a reasonable anticipation that the employee will have to respond and perform work immediately. Eligible employees shall receive an amount equal to one and one half (1 1/2) hours of work at the employee's straight time hourly rate for each eight hours the employee is on standby duty.
- B. To be eligible for standby pay, the employee must be:
1. Eligible for overtime under the Fair Labor Standards Act ("FLSA") or under paragraphs A, B or D of subsection 9-93 Overtime Exceptions.
 2. Scheduled to be available by pager, cellular phone, or telephone.
 3. Required to respond to a call and perform work within a designated amount of time not to exceed two hours.
 4. In a non-impaired condition that allows the employee to safely perform job duty assignments; and,
 5. Subject to disciplinary action if he or she does not respond to the call within the designated amount of time.
- C. When an eligible employee on standby is required to perform work, standby pay will be suspended and the employee will be paid basic pay or overtime pay, as appropriate, for the period the employee performs work.
- D. An employee who merely carries a cellular telephone or pager as a routine part of his or her job duties is not eligible for standby pay unless all the conditions set forth in paragraph B of this subsection are met.

956 Call Back Pay

- A. Overtime eligible employees required by the appointing authority to report back to the work site shall be paid a minimum amount equal to two (2) hours of work at the employee's scheduled rate of pay from the time the employee begins work.
- B. Employees who work more than two hours shall be paid for the actual time worked.

957 Swim Instruction Differential
(Effective February 22, 2013; Rule Revision Memo 3D)

- A. The Manager of Parks and Recreation will allow eligible employees to receive a Swim Instruction Differential for group or private swim lessons conducted at City-owned recreation facilities. The Department of Parks and Recreation retains the right to revoke eligibility for the differential for any business-related reason, at any time.

B In order to be eligible to receive the Swim Instruction Differential, an employee must:

1. Be classified as a Lifeguard.
2. Have current certifications for Water Safety Instructor (WSI), First Aid (adult/infant/child) and Cardiopulmonary Resuscitation for the Professional Rescuer (CPR/PR); and
3. Be assigned to conduct the swim lesson(s) by management.

C. Amount of Differential:

1. Employees will receive their current hourly rate of pay for time spent conducting swim lessons.
2. In addition, employees will receive the following swim lesson differential.
 - a. Fifty percent (50%) of the employee's current hourly rate of pay for time spent teaching a group swim lesson.
 - b. Seventy-five percent (75%) of the employee's current hourly rate of pay for time spent teaching a private swim lesson.

Section 9-60 Stipends and Other Payments

(Re-numbered December 21, 2012; Rule Revision Memo 66C)

9-61 Golf Lesson Stipend

(Revised August 4, 2023; Rule Revision Memo 89D)

A The Manager of Parks and Recreation may allow eligible employees to receive a Golf Lesson Stipend for lessons conducted at City-owned golf facilities, subject to the following conditions:

1. The employee must meet agency criteria, as outlined by the Golf Division of the Department of Parks and Recreation.
2. The Department of Parks and Recreation retains the right to revoke eligibility for the stipend for any business-related reason, at any time.
3. The employee has the responsibility for the following:
 - a. Selling and booking the lesson.
 - b. Collecting the fees; and
 - c. Conducting the lesson.
4. All lessons must be entered into and tracked by the golf course's point of sale system, or other tracking system as specified by management.
5. All lessons must be conducted at a time that does not interfere with the employee's job duties. The employee is responsible for completing their

assigned schedule each week, not including time spent teaching lessons.

6. Golf Lesson Stipends will be considered as compensation and included as reportable income.

B. Amount of Stipend:

1. Exempt employees:

- a. The only compensation the employee will receive for time spent teaching golf lessons is the Golf Lesson Stipend.
- b. The City shall retain sixteen percent (16%) of the fee charged.
- c. Eighty-four percent (84%) of the fee will be paid to the employee as a Golf Lesson Stipend.

2. Non-exempt employees:

- a. Non-exempt employees will receive their normal hourly rate of pay for time spent conducting lessons in addition to the Golf Lesson Stipend.
- b. The City shall retain forty-five percent (45%) of the fee charged.
- c. Fifty-five percent (55%) of the fee will be paid to the employee as a Golf Lesson Stipend.

3. The City portion of the fee will include the cost of golf balls.

4. Stipends will be paid on collected revenue only.

9-62 Protective Service Stipend
(Revised February 11, 2019; Rule Revision Memo 50D)

- A Volumes 7 and 30 of the Code of Colorado Regulations require the Department of Human Services (DHS) to have staff available twenty-four hours a day to receive reports of abuse and neglect, conduct initial assessments of such reports that are deemed emergencies, and investigate those reports that are appropriate for child and adult protective services.

In order to meet this requirement, the Manager of Human Services (Manager) for the Department of Human Services may schedule eligible employees to be available to respond to emergency calls at night and on weekends, mandated furlough days, and holidays. Employees so scheduled will be entitled to receive a Child or Adult Protective Service Stipend (together referred to as "Protective Service Stipend" or "Stipend") depending on the type of work assigned. An employee who is scheduled to respond to emergency calls is expected to:

1. Be available by telephone.
2. Be in a non-impaired condition that allows the employee to safely perform

job duty assignments; and

3. Respond to a call and perform work within time frames established by the DHS.

Employees who are scheduled to respond to emergency calls and fail to meet these expectations may be subject to disciplinary action, up to and including dismissal.

- B. To be eligible for the Protective Service Stipend, the employee must be exempt from overtime under Federal law and the Career Service Rules (employees who are eligible for overtime may receive standby pay as provided in the Career Service Rules) and meet other eligibility requirements as stated below.

- C. Protective Service Stipend Eligibility and Amounts

1. After-hours Administrator.

- a. An employee must be at the type and level of Administrator II to be assigned After-hours Administrator duties.
- b. An After-hours Administrator supervises the After-hours Supervisor, the After-hours Caseworker, the After-hours Placement Navigator, the After-hours Call Taker, and directly supervises any egregious and fatal or near fatal allegations needing response during nights, weekends, or holidays.
- c. Stipend: \$40 per shift worked; \$60 per shift worked on paid City holidays and mandated furlough days.

2. After-hours Supervisor.

- a. Child Welfare
 - i. An After-hours Supervisor supervises the After- hours Caseworker through monitoring of call logs and being available by phone to staff critical decisions and determine if immediate response is warranted.
 - ii. Stipend: \$75 per shift worked; \$100 per shift worked on paid City holidays and mandated furlough days.
- b. Adult Protective Services (“APS”)
 - i. Available by phone to APS After-hours Call Takers to make critical decisions and determine what level of response is warranted.
 - ii. Stipend: \$30 per shift worked; \$50 per shift worked on paid City holidays and mandated furlough days.

3. After-hours Caseworker.

- a. An After-hours Caseworker answers after-hours hotline calls, generates referrals, and determines an appropriate response after consulting with the After-hours Supervisor. If an immediate or in-person response is required, the Caseworker will respond in the field to gather additional information and assess for safety.
- b. Stipend: \$200 per shift worked on a weekday; \$300 per shift worked on a weekend day; \$350 per shift worked on paid City holidays and mandated furlough days.

4. After-hours Placement Navigator.

- a. An After-hours Placement Navigator manages the placement of children in DHS custody or on a safety plan, including but not limited to, documenting placement efforts and ensuring requisite background checks are completed in a timely fashion.
- b. Stipend: \$75 per shift worked; \$95 per shift worked on paid City holidays and mandated furlough days.

5. After-hours Call Taker (non-responder).

a. ChildWelfare

- i. An After-hours Call Taker is scheduled as needed to support increased hotline call volume in order to answer after-hours hotline calls, generate referrals, and determine an appropriate response after consulting with the After- hours Supervisor.
- ii. Stipend: \$130 per standard shift worked; \$150 stipend per shift worked on paid City holidays and mandated furlough days.

b. Adult Protective Services

- i. An After-hours Call Taker answers after-hours hotline calls, generates referrals, and acts as first point of contact for after-hours incidents and emergencies related to County wards. Responses can include additional information gathering via phone or coordinating with the APS After-hours Supervisor to determine if emergency medical or other decision-making is required.
- ii. Stipend: \$70 per weekday shift worked; \$100 per weekend shift worked; \$120 per shift worked on paid City holidays and mandated furlough days.

- D. The City is required by Federal law to treat exempt employees like non-exempt employees during a week in which the exempt employee takes an unpaid furlough.

If an exempt employee is assigned after-hours emergency response duties during a week in which a mandated furlough is scheduled to occur, the employee shall be required to work on the mandated furlough day, and take an unpaid furlough day during another week that year in which the employee has not been assigned after-hours emergency response duties.

If an exempt employee does take a furlough day during a week in which the employee has been assigned after-hours emergency response duties, the employee will be paid for all time spent performing emergency response duties in addition to the stipend provided by this rule.

9-63 Bilingual Services Stipend

(Revised February 11, 2019; Rule Revision Memo 50D)

- A. An appointing authority may pay an employee bilingual services stipend if the following conditions have been met:
1. The employee's supervisor has determined that the employee's position requires that the employee use bilingual skills regularly to perform their work; and
 2. The classification specification for the employee's classification does not require bilingual skills for all incumbents of that classification; and
 3. The employee demonstrates a proficiency in the second language, according to procedures established by the OHR Executive Director.
- B. The effective date of the bilingual services stipend shall be the beginning of the work week following the employee's demonstration of proficiency in a second language.
- C. Employees who become eligible for bilingual services stipend after February 11, 2019 shall receive a stipend of fifty dollars (\$50) per pay period. Employees who were receiving a bilingual stipend prior to February 11, 2019 shall retain that stipend amount. However, if an employee receiving a bilingual stipend prior to February 11, 2019 loses eligibility for the stipend, upon regaining eligibility they will receive a stipend of fifty dollars (\$50) per pay period.
- D. When an employee changes positions and the language skills are not a requirement of the new position, the bilingual services stipend shall cease.

9-64 Forensic Pathology Fellow Program Director Stipend

(Revised December 21, 2012; Rule Revision Memo 67C)

- A. The City and County of Denver's Office of the Medical Examiner operates a teaching fellowship program in which recent graduates of an accredited pathology program receive training in forensic pathology.

- B. The Chief Medical Examiner has the authority to assume the responsibility of directing this program or to assign this responsibility to any Forensic Pathologist who meets the criteria for program director established by the University of Colorado and the Accreditation Council for Graduate Medical Education (ACGME).
- C. As compensation for the additional duties required to direct this program, the Chief Medical Examiner may pay the Forensic Pathologist who is assigned and performing all of the duties of directing the Forensic Pathology Fellow Program additional pay equal to eight percent (8.0%) above his or her regular base pay. (Revised July 31, 2015; Rule Revision Memo 12D)
- D. The duties of the Forensic Pathology Fellow Program Director include:
 - 1. Ensuring that the Fellowship Program complies with University of Colorado and ACGME accreditation requirements.
 - 2. Recruiting Forensic Pathology Fellows for the program.
 - 3. Maintaining the program's educational curriculum; and
 - 4. Mentoring and supervising the Forensic Pathologist Fellow(s).

9-65 Work Assignment Outside of Job Classification
(Revised August 4, 2023; Rule Revision 89D)

- A. An appointing authority may temporarily assign the duties of a vacant or temporarily unoccupied position in a higher-level classification to an employee in a lower-level classification for a period of no less than one month and no more than six months in accordance with the criteria established in this rule.

The six-month limitation applies to the vacant or temporarily unoccupied position and cannot be extended by subsequently assigning the duties of that position to a different employee or by allowing an employee to perform those duties without additional pay.

The six-month limitation may be extended by a maximum of six additional months when justified by compelling circumstances and approved in writing by the OHR Executive Director and the City Attorney's Office.

This subparagraph A is intended to comply with the Colorado Equal Pay for Equal Work Act, **C.R.S. § 8-5-101** et. seq. and underlying regulations.

- 1. Employees are eligible for additional pay for such assignments when they have been assigned a majority (70% or more) of the duties and responsibilities of the vacant or temporarily unoccupied position in the higher-level classification.
- 2. Assignments of duties from any vacant or temporarily unoccupied position in a higher classification may be assigned to one employee at a time; multiple employees may not share a working out-of-classification assignment and qualify for additional pay.

3. The additional work and additional pay for work outside of an employee's job classification shall start at the beginning of a work week, which is the next available Sunday. The additional pay shall continue for the duration of the assignment.
4. Pay cannot be above the range maximum.

B. Working out-of-classification pay shall be set by the appointing authority at no less than 8% and no more than 12% above current salary, except that such pay shall not exceed the range maximum for the higher classification. If the range maximum requires setting an employee's working out of class pay below 8% and a subsequent adjustment to the pay grade of the higher classification increases the range maximum while the employee is still working out of class, the Office of Human Resources will apply the needed pay percentage change to the appropriate effective date. In determining the appropriate percentage increase, the appointing authority must consider both the number of pay grades between the two classifications, and the percentage of work being performed of the higher-level classification as follows:

Guidance of Pay Based on Number of Pay Grades Between Classifications	Pay Increase %
The vacant higher-level classification is 1 or 2 pay grades higher	8%
The vacant higher-level classification is more than 2 pay grades higher	12%

(For non-exempt employees working out of class in exempt classifications, the pay grade difference will be determined by OHR's Classification and Compensation Analysts.)

If the employee's current classification is non-exempt and the employee will perform higher-level duties of an exempt classification, the employee retains their non-exempt pay status for overtime purposes.

- C. The employee's job classification will not change as a result of a temporary assignment of higher-level job duties and responsibilities. Employees receiving additional pay for working outside of their assigned classification shall not be eligible for re-allocation to the higher-level classification.
- D. If an employee receives a merit increase during the temporary assignment, the pay for the work assignment outside of job classification shall be re-calculated based on the employee's base pay including the merit increase. The re-calculated pay shall be effective on the effective date of the merit increase (Revised January 1, 2011; Rule Revision Memo 51C).

- E Upon completion of the temporary assignment, the employee's pay shall return to the employee's base pay prior to the temporary assignment, including any merit increase awarded during the temporary assignment.
- F Pay for work outside of an employee's job classification does not impact subsequent pay for promotion, demotion, or any other personnel action.

9-66 Recruitment Bonus

(Revised September 21, 2017; Rule Revision Memo 30D)

- A A department or agency may pay a one-time recruitment bonus of up to \$10,000 according to the below schedule to attract a highly qualified external candidate whose skills, knowledge and/or abilities are deemed essential to the mission and operations of the City.
 - 1. City & County of Denver paid interns and on-call employees may be eligible for a recruitment bonus upon conversion to unlimited employment status. (Revised July 21, 2022; Rule Revision Memo 79D)
- B The amount of the recruitment bonus must be justified in writing and submitted by the department or agency to the appointing authority and the OHR Executive Director for approval. The justification must clearly demonstrate that the position is difficult to fill in the absence of a recruitment bonus.
- C The determination to pay a recruitment bonus must be based on criteria including, but not limited to:
 - 1. The success (or lack thereof) of recent efforts to recruit external candidates for similar positions, using indicators such as job offer acceptance rates, the length of time required to fill similar positions, and the probable cost of renewed recruitment efforts.
 - 2. The current salary and fringe benefits package the candidate receives.
 - 3. Employment trends and competition in the local labor market that make it difficult to recruit candidates for similar positions.
 - 4. Special qualifications or competencies (i.e., knowledge, skills, abilities, education, etc.) required for the position. These competencies must be applicable to a vast majority of the duties and responsibilities of the job or be of critical importance to the job.
 - 5. The desirability of the duties, work, or organizational environment of the position; and
 - 6. Other supporting factors.
- D The below amounts may not be exceeded unless the agency appointing authority has justification to do so (e.g., has identified a critical candidate whose skills, knowledge, and/or abilities are essential to the mission and operations of the City) and the appointing authority has obtained the approval of the OHR

Executive Director. However, no recruitment bonus may exceed \$10,000.

<u>Position Level of New Hire</u>	<u>Amount</u>
Below the level of Manager	Up to \$2,500
Manager	Up to \$5,000
Director	Up to \$10,000

The above amounts will not be grossed-up to cover taxes and other deductions on behalf of the candidate.

- E. A request to provide a recruitment bonus must be approved by the appointing authority and the OHR Executive Director before the recruitment bonus is included in an offer. The appointing authority's approval indicates sufficient existing budget funds to cover the expense.
- F. The candidate is eligible to receive the recruitment bonus as a one-time payment (less applicable taxes and other deductions) upon successful completion of employment probation. If the candidate does not successfully complete employment probation, the recruitment bonus will not be paid.
- G. The employee receiving the recruitment bonus must remain employed by the City for two (2) years. If the employee voluntarily terminates employment before serving two (2) years, the employee must repay part of the recruitment bonus.

The amount of the repayment shall be pro-rated for each year of service. The repayment of the recruitment bonus shall be deducted from the employee's final paycheck. Any remainder shall be paid by the employee to the City within 30 days of the employee's last day of employment with the City.

These terms must be included in the employment offer letter, and the employee receiving the recruitment bonus shall acknowledge acceptance of these terms when signing the employment offer letter. Payment of a recruitment bonus and the employee's acceptance of these terms shall not constitute an employment contract.

9-67 Relocation Assistance
(Revised September 21, 2017; Rule Revision Memo 30D)

- A. A department or agency may pay relocation costs of up to \$7,500 to attract a highly qualified external candidate whose skills, knowledge, and/or abilities are deemed essential to the mission and operations of the City, provided that the candidate's new main job location is at least 50 miles farther from his or her former home than the candidate's old main job location was.

- B. The amount of the relocation assistance must be justified in writing and submitted by the department or agency to the appointing authority and the OHR Executive Director for approval. The justification must clearly demonstrate that the position is likely to be difficult to fill in the absence of relocation assistance.
- C. The determination to pay relocation assistance must be based on criteria including, but not limited to:
1. The availability and quality of local candidates possessing the competencies required for the position, including the success of recent recruitment efforts to recruit external candidates for similar positions, using indicators such as job offer acceptance rates, the length of time required to fill similar positions, and the probable cost of renewed recruitment efforts;
 2. Employment trends and competition in the local labor market that make it difficult to recruit candidates for similar positions.
 3. Special qualifications or competencies (i.e., knowledge, skills, abilities, education, etc.) required for the position. These competencies must be applicable to a vast majority of the duties and responsibilities of the job or be of critical importance to the job.
 4. Personal and/or professional disruption that will occur as a result of relocation.
 5. The desirability of the duties, work, or organizational environment of the position; and
 6. Other supporting factors.
- D. An appointing authority may offer up to, but may not exceed, a relocation assistance payment of \$7,500. The amount of the offer is to be determined by the appointing authority with considerations given to the distance of the move, the size of the household involved in the move, etc. The relocation assistance payment will not be grossed-up to cover taxes and other deductions on behalf of the candidate.
- E. A request to provide relocation assistance must be approved by the appointing authority and the OHR Executive Director before relocation assistance is included in an offer. The appointing authority's approval indicates sufficient existing budget funds to cover the expense.
- F. The candidate is eligible to receive relocation assistance as a one-time payment (less applicable taxes and other deductions) within his or her first month of employment. The candidate is not required to submit qualifying expenses documentation to Accounts Payable, but the candidate should work with his or her tax advisor to appropriately declare the qualifying expenses to the IRS.
- G. The employee receiving relocation assistance must remain employed by the City for two (2) years. If the employee voluntarily terminates employment prior to

serving two (2) years, the employee must repay part of the relocation assistance.

The amount of the repayment shall be pro-rated for each year of service. The repayment of the relocation assistance shall be deducted from the employee's final paycheck. Any remainder shall be paid by the employee to the City within 30 days of the employee's last day of employment with the City.

These terms must be included in the employment offer letter, and the employee receiving the relocation assistance shall acknowledge acceptance of these terms when signing the employment offer letter. Payment of relocation assistance and the employee's acceptance of these terms shall not constitute an employment contract.

9-68 Fleet Technician Certification Stipend
(Revised August 6, 2018; Rule Revision Memo 44D)

- A. An appointing authority may pay an employee within eligible classifications the fleet technician certification stipend if the following conditions have been met:
1. The employee is in a full-time, unlimited position.
 2. The appointing authority has determined that the employee's position requires that the employee use the skills obtained by the certification fifty percent (50%) or more of the time.
 3. The classification specification for the employee's classification does not require the certification for all incumbents of that classification; and
 4. The employee demonstrates a proficiency in the area of certification by passing a test from the certifying organization, according to the procedure established by the appointing authority.
- B. Eligibility for the stipend is based on the employee's classification title, type of certification, and whether the certification is issued by an approved national certification and testing board. The order of completion shall be established by the appointing authority based on the duties assigned to eligible positions.

Eligible classifications are:

1. Fleet Technician, including Fleet Technician I, Fleet Technician II, Fleet Technician III and Fleet Technician Lead. Eligible certification and testing boards and certifications include:
 - a. Automotive Service Excellence (ASE):
 - i. Automobile & Light Truck Certification Tests (A1 –A9)
 - ii. Medium-Heavy Truck Certification Tests (T1 –T8)
 - iii. Collision Repair & Refinish Certification Tests (B2 –B5)
 - iv. Alternate Fuels Certification Test (F1)
 - v. Advanced Engine Performance Specialist Certification Test (L1)

- vi. Electronic Diesel Engine Diagnosis Specialist Certification Test (L2)
 - vii. Light Duty Hybrid/Electric Vehicle Specialist Certification Test (L3)
 - b. Emergency Vehicle Technician Certification Commission Inc. (EVT):
 - i. Ambulance Tests (E0 – E4)
 - ii. Airport Rescue and Fire-Fighting Tests (A1 – A3, F1, F4)
 - iii. Law Enforcement Vehicle Installation Test (L1)
 - c. CNG issued by Natural Vehicle Gas Institute (NVGi):
 - i. Certified Natural Gas (CNG)
2. Fleet Collision Technician. Eligible certification and testing boards and certifications include:
- a. I-CAR:
 - i. Aluminum Structural Technician, Level 1 – 3
 - ii. Estimator, Level 1 – 3
 - iii. Non-Structural Technician, Level 1 – 3
 - iv. Steel Structural Technician, Level 1 – 3
 - v. Refinish Technician, Level 1 – 3
 - vi. Production Management, Level 1 – 3
 - vii. Electrical/ Mechanical Technician, Level 1 – 3
 - b. Automotive Service Excellence (ASE):
 - i. Collision Repair & Estimating (B2 – B6)

C. The effective date of the fleet technician certification stipend shall be the beginning of the first workweek following the appointing authority’s determination that the employee successfully passed the applicable certification test.

The employee must provide a copy of passing test results to their supervisor, and proof of renewal and recertification at the appropriate time in order to continue receiving the stipend. The employee is responsible for notifying their supervisor if a certification expires and they fail to renew it.

D. Employees who are eligible for the fleet technician certification stipend shall receive a stipend per pay period based on the level of proficiency demonstrated by that employee:

# Certifications	Fleet Technician I	Fleet Technician II	Fleet Technician III/ Fleet Collision Technician	Fleet Technician Lead
Successful Completion of four (4) Certifications	\$30	\$30	\$30	\$45

Successful Completion of eight (8) Certifications	N/A	\$50	\$50	\$90
Successful Completion of twelve (12) Certifications	N/A	N/A	\$75	\$135
Successful Completion of fifteen (15) Certifications	N/A	N/A	\$100	\$180

- E When an employee changes positions and the skills are not a requirement of the new position, the fleet technician certification stipend shall cease.
- F The appointing authority retains the right to revoke eligibility for the stipend for any business-related reason, at any time.

9-69 911 Communications Training Officer Stipend
(Revised August 4, 2023; Rule Revision Memo 89D)

- A The appointing authority may pay a monthly stipend to employees who are enrolled in the 911 Communications Training Officer (CTO) program if the following eligibility conditions are met:
 1. The employee is in a full-time, unlimited position.
 2. The employee is a member of the 911 Emergency Communication Technician, 911 Dispatch Support Specialist, or 911 Police Dispatcher classifications.
 3. The employee has successfully completed the 911 CTO certification course.
 4. The employee was rated “Thriving” or higher in the employee’s most recent performance evaluation and continues to receive performance evaluations of “Thriving” or higher while receiving the CTO stipend.
 5. The employee has not been on a Performance Improvement Plan in the preceding year nor is the employee currently on a Performance Improvement Plan; and
 6. The employee is available to train new hires as requested for the duration of their CTO assignment. All trainings must be tracked through the tracking system specified by management.
- B The appointing authority may pay a monthly stipend to employees who are enrolled in the Denver International Airport Communications Center Training Officer (CTO) program if the following eligibility conditions are met:
 1. The employee is in a full-time, unlimited position.
 2. The employee is a member of the Airport Emergency Dispatcher, Airport Operations Representative, Airport Communications Center Specialist, or

Airport Communications Center Lead classifications or the Airport Communications Center Supervisor classification when training.

3. The employee has successfully completed the 911 Certified Training Officer (CTO) certification course.
 4. The employee was rated "Successful" or higher in the employee's most recent performance evaluation and continues to receive performance evaluation of "Thriving" or higher while receiving the CTO stipend.
 5. The employee has not been on a Performance Improvement Plan in the preceding year nor is the employee currently on a Performance Improvement Plan; and
 6. The employee is available to train new hires as requested for the duration of their CTO assignment. All trainings must be tracked through the tracking system specified by management.
- C. Individuals enrolled in the CTO program will receive \$450.00 per month that they are enrolled, pro-rated for partial month enrollments, not to exceed \$5,400.00 annually.
- D. The appointing authority retains the right to revoke eligibility for the stipend for any business-related reason, at any time.

Section 9-70 Hours of Work

9-71 Standard Work Week

- A. The five (5) day forty (40) hour week shall be the standard work week for employees of the Career Service.
- B. Standard work hours shall be eight (8) hours per day, excluding the meal period. In certain cases, because of the character of the work, it may be necessary for an employee to be required to eat a meal while working. When the meal period is spent predominantly for the benefit of the City, the employee shall be paid for the entire meal period (Effective October 10, 2008; Rule Revision Memo 32C).

9-73 Interruption of Work and City-wide Emergency Pay and Redeployment

(Effective September 17, 2020; Rule Revision 58D)

- A. An employee who is excused from work for the day or any part of the day when the work program is interrupted (e.g., because of weather) shall be considered to have worked the number of hours included in his or her regular daily schedule. An on-call employee who is called to work and not assigned because of an interruption or change in the work program shall be considered to have worked two (2) hours on that day.
- B. Employees may be re-deployed to work in other capacities in their own agencies or

in other City agencies to support core functions of the City during a City-wide emergency declared by the Mayor. Non-exempt employees shall be paid at their regular rate of pay for actual hours worked in a re-deployment assignment and shall be eligible for overtime in accordance with Section 9-90 Overtime.

Exempt employees eligible for overtime shall be paid their regular salaries during any workweek in which they are re-deployed and shall be eligible for overtime in accordance with 9-93 Overtime Exceptions. Exempt employees not eligible for overtime shall be paid their regular salaries during any workweek in which they are re-deployed.

Nothing in this rule prevents the City from authorizing additional pay for some or all employees working in redeployment assignments during a City-wide emergency declared by the Mayor.

Employees who were on other leave such as paid time off, vacation, compensatory time, sick, or unpaid leave at the time of a work interruption must use that leave unless called back to work. When called back to work, unused leave hours are returned to the banks and work hours are counted.

Section 9-80 Special Work Schedules

A. Deviations from the standard workweek, eight (8) hour workday or designation of special work schedules may be made so long as they are in accordance with the provisions of this section. The appointing authority must provide written notification to the OHR Executive Director of any change to the standard workweek or the designation of special work schedules for employees.

B. Establishment:

1. When the work program of a department or agency is such that the interests of the City as well as the efficiency of the organization can better be served by a special work schedule, the appointing authority may establish one for specified units, individual employees, or the entire agency.
2. Employees affected by the proposed schedule should be consulted concerning their preferences prior to the establishment of the special work schedule, and their wishes should be recognized wherever possible. The final determination shall be within the discretion of the appointing authority.
3. When an appointing authority determines that the special work schedule has not served the best interests of the City, the appointing authority may discontinue the special work schedule and shall provide written notification to the OHR Executive Director.

C. Ten-hour schedule:

Under a ten-hour schedule, employees are scheduled to work ten (10) hours per day, four (4) days per work week. Days off shall be scheduled consecutively wherever possible, provided, however, that one of the three (3) days off may be scheduled on any day during the work week in order to prevent staff shortages on any workday.

D. Nine/eighty schedule:

Under a nine/eighty schedule, employees are scheduled to work nine (9) hours per day, four (4) days per work week, and four (4) hours on one day of the work week. The start and end date of the work week must be changed so that the work week does not contain more than forty (40) hours of scheduled work.

This is accomplished by having the work week begin in the middle of the day on which the four (4) hour shift is scheduled, and end in the middle of that day a week later. This day is the flex day, upon which the employee will work eight (8) hours every other week and will have off the rest of the time.

Days off shall be scheduled consecutively wherever possible, provided, however, that the flex day may be scheduled on any day during the work week in order to prevent staff shortages on any workday.

E. Alternate work schedules:

The appointing authority may establish an alternate work schedule when neither the standard work week nor any of the special work schedules set forth in this section permit the department or agency to provide necessary services.

F. Telecommuting:

1. Telecommuting is the practice of working at home or from a site other than a department or agency's central workplace. It is a work alternative which appointing authorities may offer to or require of employees.
2. Telecommuting is not an employee benefit but an alternative method of meeting the City's needs. Telecommuting is a privilege, and an appointing authority has the right to refuse to make telecommuting available to an employee and to terminate a telecommuting arrangement at any time.
3. Employees may express a desire not to telecommute and appointing authorities should consider employees' wishes along with the needs of the City in making a final determination.
4. Permission to telecommute shall be conditioned on compliance with the telecommuting guidelines established by the OHR Executive Director (see Appendix).

G. Employee Volunteer Program
(Revised August 19, 2021; Rule Revision Memo 70D)

1. In accordance with the Employee Volunteer Program (EVP) guidelines, maintained and published by OHR on the EVP website, full-time or part-time, limited and unlimited Career Service employees, are eligible to volunteer up to eight hours per calendar year for projects pre-approved by OHR. On-call employees are not eligible to participate in the program. OHR will maintain an approved volunteer project list.
2. Participation in the EVP is a privilege, and a supervisor or manager has the right to refuse participation in the EVP at any time due to employee job performance, business need, or other appropriate reason. Employees must request approval from their supervisor or manager at least two (2) weeks prior to their anticipated volunteer date.
3. Employees participating in the EVP will receive their regular rate of pay for volunteer hours. EVP volunteer hours count towards hours worked in the workweek. EVP volunteer hours do not affect vacation leave, sick leave, or paid time off (PTO) accruals.

Section 9-90 Overtime

9-91 Policy
(Revised December 19, 2022; Rule Revision Memo 83D)

- A. In accordance with the FLSA, all work performed in excess of forty (40) hours per week by non-exempt employees shall be designated overtime work for the purposes of compensation. Overtime compensation for non-exempt employees may be paid either in cash or in compensatory time off, at the discretion of the appointing authority. The appointing authority shall inform employees of the department's or agency's overtime compensation policy.
1. Non-exempt employees who work overtime and are paid in cash shall receive compensation at the rate of one and one-half (1½) times the regular rate of pay applicable to the position. The regular rate of pay shall be computed as follows:
 - a. Multiply the hourly rate by the employee's actual hours of work in the work week to determine the weekly salary equivalent.
 - b. Total the weekly salary equivalent plus all payments for differentials, standby, and any other compensation required by the FLSA to be included in the regular rate of pay for the work week, and divided by the number of hours the employee actually worked during that week.
 2. Non-exempt employees who work overtime and are paid in compensatory time off shall accrue compensatory time at the rate of one and one-half (1½) times the overtime hours worked. An employee who has accumulated eighty (80) hours of compensatory time and is required to work overtime shall only be paid for such overtime in cash.

3. Nothing in this subsection A shall be construed to prevent the City or particular departments or agencies from temporarily increasing the overtime rate to be paid to non-exempt and/or exempt employees to no more than two (2) times the regular rate of pay, mandating that all such overtime be paid in cash, or otherwise administering overtime in a manner that is more generous to employees than the FLSA requires due to a city-wide emergency declared by the Mayor. All requests from departments or agencies to temporarily pay increased overtime rates, mandate the payment of overtime in cash and/or otherwise administer overtime in a manner that is more generous to employees than the FLSA requires shall be subject to approval by the OHR Executive Director.

B. If a paid a period of paid leave, or use of compensatory time occurs during a work week, such time shall be counted as time worked when determining whether an employee has worked overtime.

Time spent taking courses outside of the normal workday shall not be counted as time worked, even if the employee receives paid training leave to take the courses, unless the city has required the employee to take the course.

C. Unpaid leave shall not count as time worked.

D. The hours worked as an election judge by an employee shall not be counted as time worked for the purposes of determining overtime eligibility. If an employee wishes to work as an election judge during a regularly scheduled shift, the employee must request leave from the appointing authority.

9-92 Criteria for Authorizing Overtime Work

A. Overtime work shall be authorized to provide essential City services when such services cannot otherwise be provided by regular or special work schedules. Except in cases of emergency, overtime work shall be authorized and assigned in advance by an employee's supervisor or other designated individual. Working unauthorized overtime may be grounds for discipline, up to and including dismissal.

B. When an employee has been assigned work outside of his or her normal work schedule, such overtime shall be subject to the same reporting requirements as regular work hours. Failure to report for such work may be cause for disciplinary action, up to and including dismissal.

9-93 Overtime Exceptions

(Revised April 9, 2018; Rule Revision Memo 38D, April 9, 2021; Rule Revision Memo 66D)

A. Employees in overtime exempt classes as defined by the FLSA shall not receive overtime pay, except in the following situations:

1. Based on community practice, the OHR Executive Director may grant an exception to the overtime exclusion for a designated classification or classifications. The overtime rate shall be one and one-half (1½) times the

hourly rate of pay applicable to that position.

2. Career Service employees who are employed by the City and County of Denver and work for DHHA in exempt classifications in the Healthcare job family shall receive the same exceptions to overtime exclusion as comparable classifications at DHHA, not in the Career Service.
3. Upon the request of an appointing authority, the OHR Executive Director may grant an exception to the overtime exclusion for a specified period of time when the employee or employees will provide services for the City during declared emergencies or when compelling operational needs exist.

The overtime rate shall be the straight time hourly rate of pay applicable to that position, however if the employee performs greater than forty (40) hours of non-exempt services in the work week, the overtime rate shall be one and one-half (1½) times the hourly rate of pay applicable to that position.

4. Based on community practice, as approved by the OHR Executive Director, FLSA overtime exempt, first level supervisory classes shall receive overtime only under the circumstances outlined below:
 - a. Scheduled overtime occurring in a holiday week.
 - b. Overtime related to after-hour emergency response duties.
 - c. Publicly scheduled events requiring infrastructure support; and
 - d. Snow removal activities.

The overtime rate shall be one and one-half (1½) times the hourly rate of pay applicable to that position.

5. Upon the request of an appointing authority, the Office of Human Resources may grant an exception to the overtime exclusion for employees assigned to a classification below Director when the employee will provide snow removal and snow operations duties for the City.

The overtime rate shall be the straight time hourly rate of pay applicable to that position, however if the employee performs greater than forty (40) hours of non-exempt services in the workweek, the overtime rate shall be one and one-half (1½) times the hourly rate of pay applicable to that position. (Revised August 6, 2018; Rule Revision Memo 44D)

- B. The hourly rate of pay for purposes of overtime compensation under Rule 9-93 shall be computed by dividing the employee's annual salary by 52 and then dividing by the regular weekly hours of the position.
- C. Overtime compensation for eligible exempt employees shall be paid in cash. Exempt employees eligible for overtime pay shall not accrue or use compensatory time in lieu of pay, except for Holiday Compensatory Time as defined in **Rule 10 PAID LEAVE**.

Section 9-100 Record Keeping

(Revised April 1, 2008; Rule Revision Memo 26C)

- A Responsibility for maintaining time and compensation records may be vested in the Department of Finance, the OHR, or the agencies, as may be agreed among them from time to time.
- B The content of these records shall be governed by guidelines established by the OHR (see Appendix).
- C These records shall be retained for a minimum of six (6) calendar years, in a location where they would be available for inspection within seventy-two (72) hours from the date when requested by the Wages and Hours Administrator or designees.

Section 9-101 Retention Bonus

- A In order to retain a highly qualified employee(s) whose skills, knowledge and/or abilities are deemed essential to the mission and operations of the City, a department or agency may, upon approval of the OHR Executive Director, pay a retention bonus to a current employee(s) at the end of a specified period of time.
- B The payment of any retention bonus must be justified in writing and submitted by the appointing authority to the OHR Executive Director for approval.
- C The following standards shall apply to an appointing authority's request for approval to pay a retention bonus:
 - 1. The success (or lack thereof) of recent efforts to recruit external candidates for the same positions, using indicators such as job offer acceptance rates, the length of time required to fill similar positions, turnover rates, and the probable cost of additional recruitment efforts if the current employee(s) resigns;
 - 2. Employment trends and competition in the local labor market that make it difficult to recruit candidates for the same positions or that entice current employees to resign from the city;
 - 3. The degree to which essential services have been disrupted;
 - 4. Special qualifications or competencies (i.e., knowledge, skills, abilities, education, etc.) required for the position. These competencies must be applicable to a vast majority of the duties and responsibilities of the job and/or be of critical importance to the job;
 - 5. The desirability of the duties, work, or organizational environment of the position;
 - 6. The employee's work history, including length of employment with the city, performance ratings, and disciplinary record; and
 - a. A retention bonus will not be considered for any employee that has been formally disciplined in the 12 months preceding the appointing authority's request for approval to pay a retention bonus;

- b. A retention bonus will not be given to any employee that received a Development Needed or Unacceptable performance rating in the prior year performance evaluation period.
 - c. To receive a retention bonus, an employee must have been employed with the Agency in the same classification for a minimum of 6 months prior to the start of the retention period. Exceptions may be made for on-call employees.
 - d. A retention bonus will not be given to any employee who received a recruitment bonus for the same classification.
 - e. A retention bonus will not be given to an employee working out of class.
7. Any other supporting factors.
- D. No retention bonus may exceed \$5,000 to any employee in single or multiple payments and the amount of any payment should be scaled in proportion to the position, the level of need, and the length of the retention period. The amount of the bonus will not be grossed-up to cover taxes and other deductions on behalf of the employee.
- E. No retention bonus shall be offered to an employee prior to final approval by the OHR Executive Director. The appointing authority's request for approval to pay a retention bonus indicates sufficient existing budget funds to cover the expense.
- F. If payment of a retention bonus is approved, the agency or department will enter into an agreement with the employee(s) in which the employee(s) agrees to continue to be employed in their current position for a specified period of time in exchange for receiving the retention bonus at the end of that specified period of time. Payment of a retention bonus and the employee's acceptance of these terms shall not constitute an employment contract. The terms of the agreement must include the following:
- 1. The agreement does not prohibit the agency or department from applying and enforcing the Career Service Rules, including Rule 16, during the retention period.
 - 2. If the employee receives a suspension, a temporary reduction in pay, or is terminated or involuntarily demoted pursuant to Rule 16 prior to the end of the specified retention period, the employee shall forfeit the bonus.
 - 3. If the employee takes leave without pay for two or more weeks (consecutively and/or intermittently), resigns, retires, promotes, transfers, works out of class, or voluntarily demotes during the retention period, the employee will forfeit their right to the retention payment.

(Section 9-102 Commuter Stipend revised and removed March 20, 2023; Rule Revision Memo 86D)

APPENDIX 9.A.

TELECOMMUTING GUIDELINES (REFERRED TO IN RULE 9-80 F)

OVERVIEW

The City and County of Denver utilizes a hybrid model workplace where employees work where needed in a city site or telecommute remotely within the State of Colorado. The City considers telecommuting to be a viable, flexible, and productive work option when the position and the business function of the department/agency is suited to such an arrangement.

Telecommuting allows employees to work in a designated site other than a department's/agency's central workplace for all or part of their workweek/month on a regular recurring or an occasional basis or as needed during an emergency. The hybrid work arrangement may be established at-hire or at some point during the employee's tenure for a long-term or short duration depending upon the business requirements. The telecommuting arrangement could change as directed by management.

Telecommuting is not suitable for all positions, nor is it an entitlement or a benefit, nor does it change the terms and conditions of employment for any employee.

Telecommuting can benefit employees, departments/agencies, and the community in many ways, including:

- Provide for a flexible workforce and continuity of operations, including the ability to operate during an emergency when the regular worksite is inaccessible.
- Increased productivity and efficiencies.
- Cost efficiency and innovation.
- Recruitment and retention of highly qualified and in-demand skilled employees.
- Greater flexibility for employees and agencies.
- Improved employee morale and job satisfaction.
- Reduced employee absenteeism.
- Reduced employee commuting time and costs.
- Improved mobility and sustainability for the city resulting from decreased energy consumption, air pollution, traffic and parking congestions, and transit overcrowding, helping the city achieve its sustainability and climate goals.

APPLICABLE RULES AND POLICIES

[Career Service Rule 9.80](#): Telecommuting

[Career Service Rule 16.28](#): Grounds for Discipline

[Executive Order No. 16](#): Use of Electronic and Communication Devices and Services

[Fiscal Accountability Rule 10.13](#): Time and Attendance

Telework and Ergonomic Guidance on [DenverHub](#)

TELECOMMUTING CATEGORIES

Telecommuting can be informal, such as working remotely for a day or for a short-term project, or it can be a normal work arrangement, such as working remotely on a recurring partial or full-time basis.

There are three types of telecommuting:

1. **Recurring** telecommuting, where an employee **is regularly assigned to** work at a designated alternate work site or in the field on either a full-time or part-time basis. If part-time, the employee regularly works at both a designated alternate work site and a city location or in the field.
2. **Occasional** telecommuting- this is a temporary, short-term arrangement, which may be approved by a supervisor for special projects or for special circumstances.
3. **Emergency** telecommuting- this is a temporary arrangement that may be utilized during a city emergency, such as a pandemic, power outage, or inclement weather.

Either an employee or a supervisor can propose telecommuting as a possible formal work arrangement. However, the decisions around which type of work arrangement is most suitable for each position reside with the Appointing Authority and can be changed at any time.

ELIGIBILITY

Employees may be eligible for any of the informal or formal types of telecommuting arrangements identified above, depending primarily on the suitability of their workgroup or the workforce strategy of the agency. Some agencies/departments may require employees in certain workgroups or who perform certain functions to telecommute on a regular basis.

All telecommuting arrangements must be approved in advance and are subject to change at any time. Telecommuting may be appropriate on a short-term or long-term basis, depending on the department/agency's particular business needs.

Telecommuting is not a benefit of employment. A decision to allow or not allow telecommuting is not subject to the grievance procedure or to any other review or appeal procedure unless there is alleged discrimination.

EQUIPMENT AND SUPPLIES

Telecommuting is intended to be cost neutral. The city will provide, per Technology Services' ("TS") guidelines, one workstation set-up, either in the city site or in the employee's remote office.

The city is not required to provide telecommuting employees with materials or supplies needed to establish an additional alternate designated worksite (desk, chair, computer, software, cell phone, fax, copier, headphones, etc.), and assumes no responsibility for set-up or operating costs at an alternate designated worksite (telephone or internet services, etc.). Departments/agencies must follow Executive Order 16 when establishing telecommuting workspaces for their employees.

Departments/agencies providing equipment, software, or other supplies to telecommuting employees must reasonably allocate those resources based on operational and workload needs. All city rules regarding the use of computers and the internet apply while an employee is telecommuting.

Equipment supplied by the department/agency will be maintained by the department/agency (TS will maintain all technology-related items). Equipment supplied by the employee, if deemed appropriate by the department/agency, will be maintained by the employee. The city accepts no responsibility for damage or repairs to employee-owned equipment.

The city is entitled to, and may access, any personal equipment used while telecommuting, such as personal telephone, internet records, etc. The city reserves the right to make determinations as to appropriate equipment, subject to change at any time.

Equipment supplied by the department/agency is to be used for business purposes only. Employee agrees to take appropriate action to protect the items from damage or theft. The employee must immediately return all city equipment, software, and supplies at the conclusion of the telecommuting arrangement, at termination of employment, or at the department 's request.

Employees must contact their supervisors if equipment, connectivity, or other supply problems prevent them from working while telecommuting.

EMPLOYEE COMMITMENT

Mutual trust and accountability are key components in shaping a hybrid flexible work environment. The success of this work arrangement requires that all participants have a clear understanding of performance expectations and work with their supervisor to ensure that business objectives are met.

Employees need to be aware of inter-department needs and ensure that, if they are unable to meet those needs while telecommuting, there is an appropriate back-up to meet the requirements of internal and/or external clients.

SECURITY OF CITY-OWNED PROPERTY/EQUIPMENT

Consistent with the city's expectations of information security for employees working at a city location, telecommuting employees will be expected to ensure the protection of proprietary city information, equipment and network accessible from their remote office. Steps include the use of locked file cabinets and desks if applicable, regular password maintenance, and any other measures appropriate for the job and the environment including completing Technology Services' quarterly mandatory cyber security training on a timely basis.

ALTERNATE DESIGNATED WORKSITE

The employee will establish an appropriate remote work environment suitable for conducting city business. Telecommuting employees must work in an environment that allows them to perform their duties safely, efficiently, and meet performance outcomes.

Employees are expected to maintain their workspace in a safe manner, free from safety hazards, and are responsible for ensuring their work areas comply with all health and safety requirements. Injuries sustained by the employee in a remote office location and in conjunction with the employee's regular work duties may be covered by workers' compensation laws. Benefits for these injuries may be reduced as a result of any unsafe practices or the employee's failure to comply with these guidelines.

Employees who suffer a work-related injury or illness while telecommuting must notify their supervisor and contact the "OUCH Line" immediately at 303.436.OUCH (6824). The city is not liable for any injuries sustained by visitors to the employee's remote worksite, nor is it liable for any injuries caused by third parties. The city is also not liable for damages to an employee's personal or real property while the employee is working at a remote worksite, or any worksite outside of a City and County of Denver offices or facilities.

OUT OF STATE TELECOMMUTING

All telecommuting employees must primarily work at a designated worksite in the state of Colorado, unless the department/agency has received exception approvals from the Office of Human Resources and the Department of Finance and has paid for any additional associated costs, if applicable. The department/agency is also encouraged to consult with the City Attorney's Office prior to permitting an employee to work outside of Colorado.

TYPES OF TELECOMMUTING

Occasional Telecommuting

Occasional telecommuting is telecommuting that is not utilized on a regularly recurring or scheduled basis and may generally limited to one business day. It is a flexible work option that may be offered to or required of certain employees. These arrangements are approved on an as-needed basis only, with no expectation of ongoing continuance. The decision to allow occasional telecommuting is up to each department/agency and requires approval of the employee's supervisor.

Emergency Telecommuting

Emergency telecommuting is telecommuting that is used out of necessity due to extraordinary circumstances, such as during national emergency due to a pandemic, a snowstorm or other city emergency. These arrangements are declared by the city, with no expectation of ongoing continuance. Because of the extraordinary situation in which emergency telecommuting occurs, an employee may not be able to perform all of the position's essential functions.

Recurring Telecommuting

Recurring telecommuting is telecommuting that occurs on a formal, recurring basis. The department/agency will identify all work groups where implementing telecommuting is consistent with the department/agency's workplace strategy. Only positions within these work groups will be eligible for recurring telecommuting. In general, the department/agency will look at the following areas:

1. **Position responsibilities.** The position for which telecommuting is proposed is suitable for such arrangement, given the department/agency workplace strategy, with the ability to provide high quality service to the public or internal clients/customers while telecommuting being the most significant determining factor.

There should be no disruption to service or decline in the quality of services being provided by the department/agency to the public or internal clients/customers as a result of telecommuting.

Generally, this will include positions that are: independent in nature, primarily knowledge-based, lend themselves to measurable deliverables, and do not require frequent in-person interactions or the employee's immediate presence at a regular worksite.

A department/agency may have additional telecommuting requirements, guidelines, or procedures, provided they are consistent with the intent of this policy.

Telecommuting does not change the duties, obligations, responsibilities, or terms and conditions of employment. Telecommuting employees must comply with all city rules, policies, practices, and instructions.

A telecommuting employee must perform work during scheduled hours and minimize any distractions. Although an individual employee's schedule may be modified to accommodate care needs, the focus of the telecommuting arrangement must remain on job performance and meeting business demands, and not on taking care of dependents.

In addition, the prohibitions against engaging in other employment or business activities during regular work hours or while using city resources also apply to employees who are telecommuting.

Expectations relating to performance, methods and frequency of regular communications, physical attendance at meetings, participation in virtual meetings, leave usage, etc. should be established as part of the discussion process between the employee and supervisor.

The employee should be accessible to the workplace during regular work hours via virtual meeting software, cellular phone, e-mail, or other means and be able to report to work when notified, or to respond immediately to communications from other staff, supervisors, supervisors, or clients.

The city may deny, modify, or end telecommuting for any business reason that is not arbitrary or capricious. Any suspected abuse of these guidelines will be investigated and may result in corrective action, up to and including dismissal.

APPENDIX 9.B.

GUIDELINES REGARDING TIME AND COMPENSATION RECORDS (REFERRED TO IN RULE 9-110)

The following information shall be kept on time and compensation records for all employees, to the extent applicable:

- A Name in full (same as shown on social security card).
- B Identification number.
- C Home address, including the zip code.
- D Date of birth, if under 19.
- E Sex.
- F Classification.
- G Time of day and day of the week on which the employees work week begins. If the employee is part of a work force all of whose workers have a work week beginning at the same time on the same day of the work week, a single notation of the time of the day and beginning day of the work week for the whole work force of the agency or unit will suffice. If, however, any employees or group of employees has a work week beginning or ending at a different time, a separate notation shall then be kept for that employee or group of employees.
- H Hourly rate of pay for part-time, on-call, and non-exempt employees.
- I Payroll period (i.e. bi-weekly).
- J Amount and nature of each payment, such as tool and mileage allowances, excluded from the overtime rate of pay for non-exempt employees.
- K Hours worked each workday and total hours worked each work week by non-exempt employees (for purposes of this clause, a "work day" shall be any consecutive 24 hours);
- L Total daily or weekly straight-time earnings (including salaries, differentials, and standby).
- M Total of daily and weekly overtime payments.
- N Total additions to or deductions from wages paid during each pay period; additionally, a record of the dates, amounts, and nature of the items which make up the total additions and deductions shall be maintained in individual employee accounts.
- O Total wages paid each pay period.
- P Date of payment and the pay period covered by the payment; and
- Q Basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment, including fringe benefits.

RULE 10
Paid Leave

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering the City's paid leave programs, and to comply with the Colorado Healthy Families and Workplaces Act, § 8-13.3-401, *et seq.*, C.R.S. For rules regarding leave for extended illnesses or injuries see Rule 12 **Accommodations for Disability, Pregnancy, Extended Illness or Injury and Leave.**

Section 10-10 General

10-11 Definitions

(Revised December 19, 2022; Rule Revision Memo 81D)

- A. Leave: Any absence during regularly scheduled work hours. The following types of paid leave are covered in this rule:
1. Paid time off ("PTO")
 2. Sick and vacation;
 3. Bereavement;
 4. Holiday;
 5. Compensatory;
 6. Administrative;
 7. Military;
 8. Election;
 9. Court;
 10. Investigatory;
 11. Training;
 12. Occasional time off;
 13. Colorado Healthy Families and Workplaces Act ("CHFVA") Sick Leave;
 14. Colorado Public Health Emergency ("CPHE") Sick Leave; and
 15. Care Bank.

- B. 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, and maintains a mutual residence or an individual with whom an employee has registered a domestic partnership with the municipality in which the individual resides or with the state, if applicable.
- C. Partner in a Civil Union: As defined in section 14-15-103 (5) of the Colorado Revised Statutes.
- D. Immediate family: Spouse, partner in a civil union or domestic partner (“partner”), child, parent, grandparent, grandchild, sibling; the child, parent, or sibling of the partner or spouse; and a sibling’s child. The terms child, parent, and sibling shall apply equally to relationships by birth, adoption, marriage, foster care, or guardianship (e.g. step-children and step-parents). Child shall also include children for whom the officer or employee or the officer’s or employee’s spouse or partner provide day-to-day care or financial support, and a child lost through stillbirth or miscarriage.

Source: D.R.M.C. § 18-122.

- E. Public Health Emergency: An act of bioterrorism, a pandemic influenza, or an epidemic caused by a novel and highly fatal infectious agent, for which:
 - 1. An emergency is declared by a federal, state or local public health agency; or
 - 2. A disaster emergency is declared by the governor; or
 - 3. A highly infectious illness or agent with epidemic or pandemic potential for which a disaster emergency is declared by the governor.
(Revised December 17, 2020; Rule Revision Memo 65D)

10-12 Designees

Appointing authorities, including the Office of Human Resources (“OHR”) Executive Director, may delegate any authority given to them under this rule to a subordinate employee.

10-13 Applicability to Deputy Sheriff Classifications
(Revised April 9, 2021; Rule Revision Memo 66D)

None of the provisions of this Rule 10 (except election leave, donated leave and investigatory leave) shall apply to Career Service employees who hold positions in classifications in the Sheriff pay table.

10-14 References to the Denver Revised Municipal Code (“DRMC”)

This Rule 10 incorporates parts of the DRMC solely for informational purposes as a convenience to readers of this rule. Excerpts from the DRMC will be clearly identified as such and are not intended to be made a part of this rule. DRMC excerpts include a

reference to the applicable section and are labeled “**Source: DRMC §____.**” Should the applicable provisions of the DRMC change, the reference to that provision in this Rule 10 may be changed without going through the rule change process described in Rule 2 **Office of Human Resources.** In case of a conflict between the DRMC and the provisions of this rule, the DRMC will prevail.

Section 10-20 Paid Time Off (“PTO”)

10-21 Eligibility

All eligible Career Service employees hired or re-employed by the City after December 31, 2009 shall receive PTO with the exception of:

- A. Part-time employees who are regularly scheduled to work less than twenty (20) hours per week; and
- B. Employees occupying on-call positions.

Source: D.R.M.C. §18-123

10-22 PTO Allowance

- A. The amount of PTO earned by eligible full-time employees shall be calculated as follows:

	Years of Consecutive Service				
	0 < 0.5	0.5 < 5	5 < 10	10 < 15	> 15
PTO Hours Earned per Month	10	12	15	18	19

- B. A proportionate amount shall be allowed eligible employees working part-time.

Source: D.R.M.C. §18-125

10-23 Partial Leave Accruals

Full-time employees, eligible to earn PTO:

- A. Who begin employment with the City after the first day of a month; or
- B. Whose leave accruals stopped because of an extended absence from work and return to work after the first day of a month; or
- C. Who separate from employment with the City before the last day of a month

shall earn PTO in that particular month according to the following pro-ration schedule:

(Revised December 17, 2020; Rule Revision Memo 65D)

Hours Worked in the Month (incl. Paid Leave)	Years of Service				
	0 < 0.5	0.5 < 5	5 < 10	10 < 15	> 15
	PTO Hours Earned				
0-29	0	0	0	0	0
30-79	2.5	3	3.75	4.5	4.75
80-119	5	6	7.5	9	9.5
120-139	7.5	9	11.25	13.5	14.25
>140	10	12	15	18	19

10-24 Using PTO

(Revised December 17, 2020; Rule Revision 65D)

Employees must request and receive approval from their supervisor prior to using PTO, subject to the exceptions stated below.

- A. An employee may use PTO for any of the reasons listed below or for qualifying conditions under the Family and Medical Leave Act (“FMLA”) without requesting supervisory approval. Alternatively, such employees may request approval from their supervisor orally, in writing, or electronically (such as e-mail or text message).
1. The employee has a mental or physical illness, injury or health condition that prevents the employee from working;
 2. The employee needs to care for a family member who has a mental or physical illness, injury or health condition that prevents the employee from working;
 3. The employee or the employee’s family member needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or
 4. The employee or the employee’s family member needs to obtain preventative medical care.
 5. The employee or the employee’s family member has been the victim of domestic abuse, sexual assault or harassment and the use of leave is to:
 - a. Seek medical attention for the employee or the employee’s family member to recover from a mental or physical illness, injury or health condition caused by the domestic abuse, sexual assault, or harassment;
 - b. Obtain services from a victim services organization;

- c. Obtain mental health or other counseling;
 - d. Seek relocation due to the domestic abuse, sexual assault or harassment; or
 - e. Seek legal services, including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment.
- 6. Due to a public health emergency, a public health official has ordered closure of the school or place of care of the employee's child and the employee needs to be absent from work to care for the employee's child.
- 7. The employee needs to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care; or
- 8. The employee needs to evacuate the employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate the employee's residence.
- B. All such uses of PTO are subject to the requirements for reporting leave used for sickness or injury set forth in this Rule 10.
- C. When an employee's need to use PTO is foreseeable, including PTO use for the reasons stated in paragraph A above, such employee shall make a good-faith effort to provide notice to their supervisor in advance of using PTO and shall make a reasonable effort to schedule the use of the PTO in a manner that does not unduly disrupt the operations of the agency.
- D. All other uses of PTO are subject to supervisory approval based on the work requirements of the agency. Supervisors shall not unreasonably withhold approvals to use PTO, and are expected to confer with employees and recognize their wishes where possible. Preference in the scheduling of pre-approved PTO based on reasons other than those stated in Rule 10-24, Section A.1-6 shall be given to employees in order of their total length of continuous employment in the Career Service; provided, however, that an employee who has been re-instated or re-employed following a lay-off shall be given credit for the period of continuous employment in the Career Service prior to the lay-off.
- E. Absences from work because of authorized medical examinations or treatment related to an occupational injury or occupational disease arising out of and within the course and scope of employment with the City for which the City has admitted liability or has agreed to permit medical treatment while investigating the claim shall be treated as time worked. The employee shall make a reasonable effort to schedule the examination or treatment so as not to unduly disrupt the operations of the department or agency.

10-25 Maximum Accumulation and Pay-out of PTO

- A. PTO earned by an employee shall be deposited in their PTO bank. PTO may not be accumulated in the PTO bank in excess of four hundred (400) hours. (Revised August 27, 2019; Rule Revision Memo 55D)

Source: D.R.M.C. §18-124 and 127(a)

- B. Exceeding the PTO Accumulation Limit:

Ordinarily an employee at the PTO leave accumulation limit of four hundred (400) hours cannot accumulate any additional PTO. However, if the appointing authority is unable to allow an employee who has accumulated the maximum hours of PTO to use PTO because of workload, the appointing authority shall request that the OHR Executive Director allow the employee to exceed the maximum amount. The employee must use the excess over four hundred (400) hours in the employee's PTO bank within one year of the approval date.

- C. Employees who elected to voluntarily convert from sick and vacation leave to PTO leave on February 1, 2010 were required to convert their sick and vacation leave balances into a special leave bank. PTO used by an employee shall be debited from the employee's PTO bank first unless it has been exhausted or if the employee requests that the special leave bank be used first. This special leave bank cannot:

1. Exceed 400 hours; or
2. Be replenished.

Source: D.R.M.C. §18-124

- D. Upon separation, a PTO recipient shall be paid at their regular rate of pay for the unused portion of their accumulated PTO bank and special bank if applicable. (Revised August 27, 2019; Rule Revision Memo 55D)

Source: D.R.M.C. §18-127(b)

Section 10-30 Sick and Vacation Leave

10-31 Eligibility

All eligible Career Service employees who:

- A. Were receiving paid sick and vacation leave on December 31, 2009;
- B. Remain continuously employed by the city; and
- C. Have not voluntarily elected to receive PTO benefits:

shall be entitled to continue to receive paid sick and vacation leave so long as the officer or employee does not become:

- A. A part-time employee who is regularly scheduled to work less than twenty (20) hours per week; or

- B. An employee occupying an on-call position.

Source: D.R.M.C. §18-131

10-32 Sick and Vacation Leave Allowance

- A. Eligible full-time employees shall accrue eight (8) hours of sick leave every month.
- B. The amount of vacation leave earned by eligible full-time employees shall be calculated as follows:

	Years of Consecutive Service			
	0 < 5	5 < 10	10 < 15	> 15
Vacation Hours Earned per Month	8	10	12	14

- C. Employees working part-time shall accrue a proportionate amount.

Source: D.R.M.C. §18-132

10-33 Partial Leave Accruals (Revised December 17, 2020, Rule Revision Memo 65D)

Full-time employees, eligible to earn sick and vacation leave:

- A. Who begin employment with the City after the first day of a month; or
- B. Whose leave accruals stopped because of an extended absence from work and return to work after the first day of a month; or
- C. Who separate from employment with the City before the last day of a month

shall earn vacation leave in that particular month according to the following pro-ration schedule:

Hours Worked in the Month Earned (incl. Paid Leave)	Years of Service			
	0 < 5	5 < 10	10 < 15	> 15
	Vacation Hours Earned			
0-39	0	0	0	0
40-79	2	2.5	3	3.5
80-119	4	5	6	7
120-139	6	7.5	9	10.5
≥140	8	10	12	14

And shall earn sick leave in that particular month according to the following pro-ration schedule:

Hours Worked in the Month Earned (incl. Paid Leave)	Sick Hours Earned
0-29	0
30-79	2
80-119	4
120-139	6
≥140	8

10-34 Using Sick and Vacation Leave
(Revised December 17, 2020, Rule Revision Memo 65D)

A. Sick leave:

1. Sick leave may be used for the reasons set forth below, for qualifying conditions under the FMLA and as otherwise provided in these rules.
 - a. The employee has a mental or physical illness, injury or health condition that prevents the employee from working;
 - b. The employee needs to care for a family member who has a mental or physical illness, injury or health condition that prevents the employee from working;
 - c. The employee or the employee's family member needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition;
 - d. The employee or the employee's family member needs to obtain preventative medical care;
 - e. The employee or the employee's family member has been the victim of domestic abuse, sexual assault or harassment and the use of leave is to:
 1. Seek medical attention for the employee or the employee's family member to recover from a mental or physical illness, injury or health condition caused by the domestic abuse, sexual assault, or harassment;
 2. Obtain services from a victim services organization;
 3. Obtain mental health or other counseling;

4. Seek relocation due to the domestic abuse, sexual assault or harassment; or
 5. Seek legal services, including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment.
- f. The employee needs to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of an immediate family member, in conformance with Rule 10-50 B;
 - g. The employee needs to care for an immediate family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care; or
 - h. The employee needs to evacuate the employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water or other unexpected occurrence or event that results in the need to evacuate the employee's residence.

B. Vacation leave:

Vacation leave shall be taken at a time convenient to the department or agency. The department or agency will confer with employees and recognize their wishes where possible. Preference in the scheduling of vacation time shall be given to employees in order of their total length of continuous employment in the Career Service; provided, however, that an employee who has been re-instated or re-employed following a lay-off shall be given credit for the period of continuous employment in the Career Service prior to the lay-off.

Source: D.R.M.C. §18-132(b)(2)

10-35 Limits on Sick and Vacation Leave Accumulation

- A. Sick Leave Accumulation: Sick leave may be accumulated to a limit of nine hundred sixty (960) working hours. When the accumulation exceeds eight hundred eighty (880) working hours, an employee may request that accumulated sick leave in excess of the eight hundred eighty (880) working hours be converted to vacation leave. Such conversions are in addition to the monthly amount of vacation leave allowed by this section. Employees may not convert sick leave to vacation leave if such a conversion would result in the employee's accumulated vacation leave exceeding the limits allowed by this Rule 10.

Source: D.R.M.C. §18-132(a)(2)

B. Vacation Leave Accumulation:

1. Employees with up to ten (10) years of service may accumulate up to two hundred eighty-eight (288) hours of vacation leave. Employees with ten (10) or more years of service may accumulate up to three hundred thirty-six (336) hours of vacation leave.

2. Exceeding the Vacation Accumulation Limit:

Ordinarily an employee at the vacation leave accumulation limit cannot accumulate any additional vacation leave. However, if the appointing authority is unable to allow an employee who has accumulated the maximum hours of vacation leave to use vacation leave because of workload, the appointing authority shall request that the OHR Executive Director allow the employee to exceed the maximum amount. The employee must use the excess over the vacation leave accumulation limit within one year of the approval date.

10-36 Sick and Vacation Leave Pay Upon Separation

A. Sick Leave:

1. The following table applies to the pay-out of sick leave upon separation for any reason other than death or retirement:

Full Years of Service	Payout Formula	
<5	No pay out	
5	Sick leave balance minus	(5 X 40 hrs.) or 200 hrs.
6	Sick leave balance minus	(6 X 40 hrs.) or 240 hrs.
7	Sick leave balance minus	(7 X 40 hrs.) or 280 hrs.
8	Sick leave balance minus	(8 X 40hrs.) or 320 hrs.
9	Sick leave balance minus	(9 X 40hrs.) or 360 hrs.
>10	Sick leave balance minus	(10 X 40hrs.) or 400 hrs.

2. Upon separation due to retirement or death, an employee shall be paid at their regular rate of pay for one-half (1/2) of all accumulated sick leave credits existing on the effective date of separation or death, or in accordance with the method described above, whichever is higher, but not to exceed five hundred sixty (560) working hours. (Revised August 27, 2019; Rule Revision Memo 55D)

B. Vacation Leave:

Employees shall be paid at their regular rate of pay for the unused portion of their accumulated vacation leave upon separation from employment.

Source: D.R.M.C. §18-134

Section 10-40 Administration of Paid Time Off and Sick and Vacation Leave
(Revised December 17, 2020; Rule Revision Memo 65D)

10-41 Effect of Appointment to a Career Service Position

When an employee is appointed to a Career Service position from any other City department or agency which is governed by the PTO ordinance or the sick and vacation ordinance, the employee's paid leave credits shall be transferred to the new position, so long as there is no break in service.

Source: D.R.M.C. §18-126 & §18-133

10-42 Length of Service

In computing length of service for the purpose of determining an employee's PTO or vacation leave accrual rate, service in a paid position in any City department or agency other than the Classified Service of Police and Fire, the Denver Water Board, on-call positions, and contract positions, shall be counted as service, provided such service was performed continuously, immediately prior to the employee's employment or re-employment appointment to the Career Service.

10-43 Using Paid Leave

(Revised December 17, 2020, Rule Revision 65D)

- A. The amount of PTO or sick and vacation leave used shall be the amount of time an employee is absent from their regularly scheduled shift(s).

10-44 Reporting and Investigation of Leave Used for Sickness or Injury

(Revised December 17, 2020; Rule Revision 65D)

- A. If an employee is absent for reasons that entitles the employee to use PTO, sick leave, or CHFVA Sick Leave without supervisory approval, the employee or a member of the employee's household shall notify the employee's supervisor as soon as possible but at least within two (2) hours after the employee's usual reporting time. Appointing authorities may establish reporting procedures which differ from the standard for an entire agency, for specific units, or for individual employees in order to meet special program needs or workloads.
- B. Appointing authorities may investigate any potential false or fraudulent uses of PTO, sick leave, or CHFVA Sick Leave. False or fraudulent use of PTO, sick leave, or CHFVA Sick Leave shall be cause for disciplinary action and may result in dismissal.
- C. If an employee is using PTO, sick leave, or CHFVA Sick Leave for four (4) or more consecutive work days, a supervisor may require reasonable documentation that the paid leave is for a purpose authorized by this Rule 10. An appointing authority, supervisor, or employee who has reason to believe that the absence may be a qualifying event under the FMLA should contact the Office of Human Resources.

10-45 Donating Leave
(Revised December 17, 2020; Rule Revision Memo 65D)

- A. A Career Service employee may donate sick leave to another Career Service employee provided that the employee donating sick leave:
 - 1. Has been earning sick leave from the City continuously for the last five years; and
 - 2. Retains a sick leave balance of at least two hundred forty (240) hours after the donation.
- B. A Career Service employee may donate PTO to another Career Service employee provided that the employee donating PTO retains a PTO balance of at least eighty (80) hours after the donation.
- C. A Career Service employee may donate PTO or sick leave to a non-Career Service City employee provided that the recipient employee's department or agency and any applicable collective bargaining agreement allow employees to receive donations of leave from Career Service employees and provided that the applicable donor requirements have been met.
- D. A Career Service employee may donate PTO or sick leave to, or receive donated sick leave from, an employee covered by the Sheriff pay table to the extent permitted by the applicable collective bargaining agreement and provided that the donor and recipient requirements applicable to the non-Sheriff employee have been met. (Revised April 9, 2021; Rule Revision Memo 66D)
- E. No other form of paid leave, including CHFWA Sick leave and CPHE leave, may be donated or received by Career Service or non-Career Service employees.
- F. Recipient Requirements:
 - 1. Before an employee can receive donated leave, the employee (or the employee's representative) must provide notice to the Department of Finance that the employee anticipates a need for donated leave. Such notice shall estimate how much donated leave the employee expects to use in the current calendar year. Should the employee need more donated leave beyond the original estimate, the employee shall provide notice of this to the Department of Finance before the employee can receive additional donations.
 - 2. In order to use donated leave, an employee must:
 - a. Have exhausted their accumulated compensatory time, sick leave and vacation leave or PTO, personal holiday and Care Bank leave as set forth in this Rule 10 **Paid Leave**, be absent from work and:
 - i. Be receiving salary continuation leave, or temporary disability benefits under the provisions of the Workers' Compensation Act. In either of these situations, the

employee may only use donated leave to make up the difference between the employee's base salary, and the total of other paid leave received and the temporary disability benefits the employee is receiving;

- ii. Be receiving leave as an accommodation because of the employee's pregnancy, physical recovery from childbirth, or related condition;
- iii. Be receiving approved FMLA leave;
- iv. Be receiving approved FCA leave;
- v. Be receiving approved ADA leave; or
- vi. Have received written notice of a contemplation of medical disqualification meeting. The employee may use donated leave until medical disqualification occurs or until the end of the period in which a decision on medical disqualification must be issued, whichever occurs first.

(Revised August 27, 2019; Rule Revision Memo 55D)

- 3. Donated leave can be used to cover absences that occur up to fifteen (15) calendar days before the leave was posted to a recipient's account so long as the other conditions of this section have been met.
 - 4. A Career Service employee may receive donated leave from a non-Career Service City employee provided that the donor employee's department or agency allows employees to donate leave to Career Service employees and that the recipient requirements listed above have been met.
 - 5. Employees who are eligible to receive donated leave may receive either donated PTO or donated sick leave regardless of whether the employee is enrolled in the PTO or sick and vacation leave plan.
- G. Employees cannot use more than six hundred (600) hours of donated leave in a calendar year. Employees cannot receive donated leave to the extent that the donated leave will increase the employee's PTO or sick leave bank over the applicable maximum accumulation limit.
- H. Computation of Donated Leave
- 1. The amount of donated leave to be credited to the recipient's account shall be computed as follows:
 - a. Multiply the number of hours of leave being donated by the hourly rate of pay of the donor employee;
 - b. Divide the result by the hourly rate of pay of the recipient; and

- c. Round the result down to the closest full hour.
 - 2. The computations made in paragraph H.1. shall be managed by the Department of Finance in accordance with procedures to be established by that office.
- I. Recipients of donated leave are not entitled to receive pay upon separation for unused donated leave. Unused donated leave may not be donated to another employee or returned to the donor.

10-46 Effect of Separation on Leave Accrual
(Revised December 17, 2020; Rule Revision 65D)

Employees shall not earn PTO, sick and vacation leave, or CHFWPA Sick Leave after the employee's last day as a City employee. Rule 14 **SEPARATION OTHER THAN DISMISSAL** and Rule 16 **CODE OF CONDUCT AND DISCIPLINE** provide this date for dismissals and other types of separations.

10-47 Effect of Reinstatement and Re-employment Following Layoff on Choice of Leave Plans and Leave Balances

The following shall apply to employees reinstated after layoff or re-employed while their name is on a reinstatement list:

- A. Employees who were receiving paid sick and vacation leave benefits at the time of their layoff will be enrolled in the PTO plan unless they elect in writing to continue in the paid sick and vacation plan within thirty (30) days of the effective date of their reinstatement.
- B. Employees who timely elect to continue in the paid sick and vacation plan shall have all sick leave they lost at the time of layoff restored to their sick leave bank.
- C. Employees who do not timely elect to continue in the paid sick and vacation plan may be able to convert sick leave that was lost at the time of layoff to a special PTO bank. The amount that may be converted is based on their accumulated sick leave at the time of separation. Up to one-half of this accumulated amount may be converted to the special PTO bank, subject to the following:
 - 1. The amount converted may not exceed four hundred (400) hours; and
 - 2. The amount of sick leave the employee was paid for at the time of separation must be deducted.

Source: D.R.M.C. §18-123 (c)

Section 10-50 Bereavement Leave

A. Employees receiving PTO:

Employees who receive PTO benefits shall be granted up to forty (40) hours of paid bereavement leave because of the death of a member of the employee's

immediate family. This forty (40) hours of bereavement leave shall not count against the employee's PTO bank.

Source: D.R.M.C. §18-128

- B. Employees receiving sick leave, pursuant to Rule 10-32A:
(Revised December 17, 2020, Rule Revision 65D)

Employees receiving sick leave pursuant to Rule 10-32A shall be entitled to use up to forty-eight (48) hours of sick leave because of the death of a member of an employee's immediate family.

- C. Employees receiving CHFVA Sick Leave:
(Revised December 17, 2020; Rule Revision 65D)

Employees who receive CHFVA leave for bereavement purposes shall not be entitled to receive bereavement leave as outlined above.

- D. Additional Bereavement Leave:
(Revised December 17, 2020; Rule Revision Memo 65D)

A supervisor may grant additional paid or unpaid leave for bereavement.

Section 10-60 Paid Holiday Leave

- 10-61 Eligibility
(Revised October 19, 2018; Rule Revision Memo 46D)

- A. All eligible Career Service employees shall receive paid holiday leave benefits as provided in these rules, with the exception of:
1. Part-time employees who are regularly scheduled to work less than twenty (20) hours per week; and
 2. Employees occupying on-call positions.

Source: D.R.M.C. §18-141

- B. Unless otherwise provided in these rules, an eligible employee must be at work or on an authorized leave on the scheduled workdays immediately preceding and immediately following the day on which the holiday is observed in order to receive paid holiday leave.
- C. Religious or other holidays not observed by the City may be granted in accordance with the rules governing paid and unpaid leave.

- 10-62 Designation of holidays

"Holidays" for the purposes of this rule shall mean eight (8) hours in the following days:

- A. New Year's Day (January 1);
- B. Martin Luther King Day (third Monday in January);
- C. Washington's Birthday (observed on the third Monday in February);
- D. Cesar Chavez Day (last Monday in March);
- E. Memorial Day (last Monday in May);
- F. Juneteenth (June 19)
- G. Independence Day (July 4);
- H. Labor Day (first Monday in September);
- I. Indigenous Peoples' Day (second Monday in October)
- J. Veterans' Day (November 11);
- K. Thanksgiving Day (fourth Thursday in November);
- L. Christmas Day (December 25);
- M. Personal holiday (one (1) personal holiday on date agreed upon by employee and the city to be used within the calendar year).

Source: D.R.M.C. §18-142

10-63 Observation of Holiday

- A. Subject to the following provisions, all offices, agencies, commissions and departments of the city are hereby authorized and directed to grant to employees, with pay, the previously designated holidays.
 - 1. If any of the holidays shall fall upon a Sunday, then the Monday following shall be considered as the holiday. If any of the holidays shall fall upon a Saturday, then the preceding Friday shall be considered as the holiday.
 - 2. An employee may be required to work on a holiday in order to maintain essential services to the public.

Source: D.R.M.C. §18-143

- B. When a holiday falls on an employee's regular day off, it shall be observed as follows:
 - 1. If the holiday falls on the first day off, it shall be observed on the preceding workday.
 - 2. If the holiday falls on the second or third regular day off, it shall be observed

- on the next workday.
- C. Appointing authorities who require an employee to work on an observed holiday may schedule the employee's paid holiday leave to be taken on another day during that holiday week as long as the employee is provided with adequate notice of this change in advance of the holiday week.

10-64 Amount of Paid Holiday Leave Received

- A. An eligible full-time employee shall receive eight (8) hours of paid holiday leave in a week in which a holiday occurs.
- B. An eligible part-time employee regularly scheduled to work at least twenty (20) hours per week shall receive paid holiday leave as follows:
1. An employee who is regularly scheduled to work from twenty (20) to twenty-nine (29) hours per week shall receive four (4) hours of paid holiday leave.
 2. An employee who is regularly scheduled to work from thirty (30) to thirty-nine (39) hours per week shall receive six (6) hours of paid holiday leave.

10-65 Holiday Pay for Employees on Special Work Schedules

If the holiday falls on an employee's regularly scheduled work day and the work day is scheduled to be more than eight hours long, one of the following choices shall be selected by the employee, subject to approval by the appointing authority, to make up for the difference between the length of the work day missed and the eight hours of paid holiday leave allowed:

- A. Hours may be deducted from the employee's administrative leave granted for exemplary performance, earned compensatory time, earned paid time off, or earned vacation leave;
- B. The employee may work additional hours within the work week; or
- C. The employee may take the hours as unpaid leave.

10-66 Compensation for Hours Worked in a Holiday Week

- A. In a week in which a holiday occurs, full-time employees receive eight hours of holiday leave and are expected to work (or use leave) for the remaining thirty-two (32) hours. Part-time employees are expected to work (or use leave) during the time left after the employee's paid holiday leave is deducted from the hours they are normally expected to work in a week.
- B. In addition, employees in classifications in exempt pay tables shall receive straight time holiday compensatory time for the hours the employee actually works: (Revised April 9, 2021; Rule Revision Memo 66D)
1. a. On the day the employee is scheduled to observe the holiday that week, or

- b. On any of the employee's scheduled days off in a week when a holiday occurs; and

The employee is not entitled, under Rule 9 **PAY ADMINISTRATION**, to receive overtime for working on the holiday or regularly scheduled day off in that holiday week. (Revised August 27, 2019; Rule Revision Memo 55D)

2. In no event shall an employee receive more hours of holiday compensatory time than the employee would have been entitled to receive as paid holiday leave in a holiday week.
3. Employees shall only receive holiday compensatory time to the extent that the combination of hours worked and paid leave used (including paid holiday leave) during a holiday week exceeds forty (40) hours.
4. At the discretion of the appointing authority, straight time pay may be substituted for the holiday compensatory time. Holiday compensatory time may be taken at any time mutually convenient to the employee and the appointing authority.

Section 10-70 Other Paid Leave

10-71 Compensatory Time

Compensatory time earned under the provisions of Rule 9 **Pay Administration** or this Rule 10 may be taken at any time mutually convenient to the employee and the appointing authority. However, all accrued compensatory time earned in the prior calendar year shall be used by the last pay period of the prior calendar year or shall be paid out in January of the following calendar year in cash and calculated based upon the employee's pay rate as of the last pay date of the prior calendar year. An eligible non-exempt employee who has accrued compensatory time in accordance with Section 9-90 shall receive payment for the unused portion of such accrual at the final regular rate of compensation received by such employee when the employee is separated from the Career Service.

10-72 Administrative Leave

- A. Appointing authorities shall grant paid administrative leave for the following purposes:
 1. To present grievances or appeals to an official of the City or to represent an employee presenting a grievance or an appeal. However, if flexibility exists as to the exact date and time, the leave shall be granted at the convenience of the appointing authority;
 2. To participate in the Career Service Mediation Program. Administrative leave shall be granted to employees who participate in mediation either as a party or as the mediator; or
 3. To represent another City employee at meetings with that employee's

supervisor or manager, as set forth in Rule 16 **CODE OF CONDUCT AND DISCIPLINE**. The representative shall be allowed to take up to a maximum of four (4) hours of administrative leave per pay period so long as the use of such leave does not adversely affect the representative's department or agency and has been approved in advance by the employee's supervisor.

- B. Appointing authorities may grant paid administrative leave for the following purposes:
1. To compete for positions in the Career Service, including all related interviews and examinations;
 2. To reward exemplary performance, such as Employee of the Quarter, Employee of the Year, or if the appointing authority wishes to recognize an employee's outstanding contribution to the agency. The appointing authority may grant up to twenty (20) hours of administrative leave per calendar year for exemplary performance. An employee may not accrue more than twenty (20) hours of administrative leave for exemplary performance at any time during a calendar year. As of July 1, 2023, any employee having in excess of twenty (20) hours of administrative leave for exemplary performance, shall have that excess tracked in a separate bank; or
 3. When the appointing authority deems there is a business necessity, for a maximum of ten (10) calendar days per calendar year. The appointing authority may request an extension of up to twenty (20) calendar days from the OHR Executive Director. The OHR Executive Director may approve the request for an extension for good cause shown.
 4. The mayor (or appointing authority) may grant up to eight (8) hours of Wellness leave in a calendar year.

Granting or failing to grant administrative leave under this paragraph B shall not be subject to grievance or appeal.

- C. Unused Administrative Leave shall not be paid out to an employee upon separation from the City and may not be donated to another employee at any time.

10-73 Paid Military Leave

- A. All probationary and career status employees in the Career Service shall be eligible for up to the equivalent of three (3) weeks of work on the employee's regular work schedule as paid military leave each calendar year for the time the employee is engaged in military training or service.
- B. Notification Requirement: Employees engaged in military service or training requiring military leave shall provide notice in advance to their appointing authority, when possible. If the employee is unable to provide advance notice because of military necessity, the employee may give notice after starting duty.
- C. Employees who continue in military service beyond the time for which paid military leave is allowed shall be placed on extended military leave, which is covered by Rule 11 **Additional Types of Leaves of Absence**.

- D. Employees who take paid military leave will be reinstated upon their return to work in the position the employee held at the time their military service began or a position of like seniority, status, and pay if such a position is available at the same salary that the employee would have received if the employee had not taken leave.

10-74 Election Leave

Employees who are eligible to vote in an election are entitled to use up to two (2) hours of paid election leave for the purpose of voting during the time the polls are open, if an employee's work hours on the day of an election are such that there are less than three (3) hours between the time of opening and the time of closing of the polls during which the employee is not required to be on the job. Employees must request and receive approval for the leave prior to the election day. The appointing authority may specify the hours during which the employee may be absent, except that the employee shall be allowed to take the election leave at the beginning or end of the work shift if requested.

Source: C.R.S. §1-7-1

10-75 Court Leave

- A. Unless an employee is a defendant in a criminal or civil lawsuit, an employee shall be granted paid court leave during time the employee is regularly scheduled to work, if the employee is:
1. Required to serve as a juror in a court of law;
 2. Subpoenaed by the City and County of Denver to testify in a court of law;
 3. Subpoenaed to testify in a court of law or administrative proceeding concerning matters arising out of the course of their employment; or
 4. Requested to serve as a witness in a court of law or administrative proceeding by their appointing authority or other authorized person to represent the City's interest in the legal proceedings.
- B. Court leave is intended only to apply to those time periods when the employee is needed for court service and for reasonable travel time between court and work.
- C. In order to receive court leave, an employee who is called for jury duty or to serve as a witness shall present the original summons or subpoena from the court to their supervisor and, at the conclusion of such duty, a signed statement from the Clerk of the Court or other evidence showing the actual time of attendance at court.
- D. Fees received for jury service in a Federal, State, or Municipal court shall be in addition to, and irrespective of, an employee's regular salary.

10-76 Investigatory Leave

An appointing authority may place an employee on paid investigatory leave pending an investigation of a possible rule violation or other purposes related to an employee's alleged misconduct as provided in Rule 16 **Code of Conduct and Discipline**.

Investigatory leave may be for no more than forty-five (45) calendar days, unless an extension of time has been approved by the OHR Executive Director.

10-77 Training Leave

- A. Appointing authorities may grant paid training leave. Any training program for which such leave is granted must be job-related, which includes career development training that will prepare the employee for advancement with the City.
- B. Appointing authorities may grant training leave for the purpose of attending institutes, seminars, or educational courses related to an employee's work for extended periods of time, at the appointing authority's discretion.
- C. Appointing authorities shall allow paid trainees and paid interns to arrange their work schedule if they need to attend classes during normal working hours. Paid trainees and paid interns are not entitled to training leave while attending classes for the degree or certificate program they are required to complete during their training or internship period. (Revised November 18, 2015; Rule Revision Memo 15D)
- D. Use of training leave by employees shall be arranged whenever possible during regularly scheduled work hours. Appointing authorities who require attendance at training activities during off-duty hours that are designed to increase the competencies, knowledge, skills and abilities of employees for the position which they presently occupy shall temporarily change the affected employee's standard work hours to include the training schedule. Employees who are required to attend such training during off-duty hours shall be granted paid training leave for the time spent in training.
- E. For the purposes of this subsection, on-line training courses shall be treated the same as classroom training sessions.
- F. Employees must present proof of attendance at any training for which they are authorized to receive training leave.

10-78 Occasional Time Off

Exempt employees may be allowed paid occasional time off to attend to personal affairs, at the discretion of the appointing authority.

Section 10-80 Colorado Healthy Families and Workplaces Act ("CHFVA") Sick Leave
(Revised December 17, 2020; Rule Revision 65D)

10-81 CHFVA Sick Leave Policy

It is the policy of the City to provide paid sick leave to its employees. This rule is intended to comply with and be interpreted consistent with the CHFVA and the corresponding rules, regulations and opinions issued by the Colorado Department of Labor and Employment. To the extent an issue is not addressed herein, or if there is a conflict with a Career Service Rule, the CHFVA and its corresponding rules, regulations and opinions shall govern.

10-82 CHFVA Sick Leave

- A. “CHFVA Sick Leave” is sick leave paid pursuant to the Colorado Healthy Families and Workplaces Act, SB 20-205, Colorado Revised Statutes § 8-13.3-403, to on-call employees and part-time employees who normally work fewer than 20 hours per week.
- B. Employees who earn CHFVA Sick Leave shall accrue such leave at the rate of one hour of CHFVA Sick Leave for every 30 hours worked.
- C. Employees who earn CHFVA Sick Leave may not accrue or use more than 48 hours of paid sick CHFVA Sick Leave each year. Up to 48 hours of CHFVA Sick Leave that an employee accrues in a year, but does not use, may carry forward to and may be used in a subsequent year, except that the employee may not use more than 48 hours of CHFVA Sick Leave in a year.
- D. An employee may use CHFVA Sick Leave for the following situations:
 - 1. The employee has a mental or physical illness, injury or health condition that prevents the employee from working;
 - 2. The employee needs to care for a family member who has a mental or physical illness, injury or health condition that prevents the employee from working;
 - 3. The employee or the employee’s family member needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition;
 - 4. The employee or the employee’s family member needs to obtain preventative medical care;
 - 5. The employee or the employee’s family member has been the victim of domestic abuse, sexual assault or harassment and the use of leave is to:
 - a. Seek medical attention for the employee or the employee’s family member to recover from a mental or physical illness, injury or health condition caused by the domestic abuse, sexual assault, or harassment;
 - b. Obtain services from a victim services organization;
 - c. Obtain mental health or other counseling;
 - d. Seek relocation due to the domestic abuse, sexual assault or harassment; or
 - e. Seek legal services, including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic

abuse, sexual assault, or harassment.

6. Due to a public health emergency, a public health official has ordered closure of the school or place of care of the employee's child and the employee needs to be absent from work to care for the employee's child.
- E. Employees receiving CHFVA Sick Leave shall not be paid out the balance of any such accumulated leave upon separation from the City. However, if an employee receiving CHFVA Sick Leave separates from employment and is rehired within six months after the separation, the employee's CHFVA Sick Leave balance shall be reinstated.
- F. The amount of CHFVA Sick Leave used shall be the amount of time an employee is absent from their regularly scheduled shift(s).
- G. CHFVA Sick Leave shall not be used before it is accrued and posted to the employee's account.
- H. Employees may take CHFVA Sick Leave in increments of at least fifteen (15) minutes.

10-83 Colorado Public Health Emergency ("CPHE") Sick Leave

A. Supplement

1. In addition to any PTO, sick leave and CHFVA Sick Leave an employee may accrue, an employee may be eligible to receive a one-time supplement of paid sick leave in the event of a Public Health Emergency.
2. On the date a Public Health Emergency is declared, each employee may have his or her available paid sick leave supplemented in a CPHE Sick Leave bank to ensure the employee is able to take a total of 80 hours of paid sick leave as follows:
 - a. Employees who receive PTO or sick leave and have 80 hours or more of accumulated leave on the date the Public Health Emergency is declared shall not receive any additional paid sick leave.
 - b. Employees who receive PTO or sick leave and have fewer than 80 hours accumulated in their PTO or sick leave banks on the date the Public Health Emergency is declared shall have their CPHE Sick Leave bank supplemented as follows:
 - i. Full-time employees (those who normally work 40 hours or more in a week) shall have their CPHE Sick Leave banks supplemented by the difference between the number of hours accumulated in their PTO or sick leave banks and 80 hours so that the total amount of leave available to the employee is 80 hours.
 - ii. Part-time employees (those who work fewer than 40 hours

in a week) shall receive a supplement in the amount of the greater of:

- (a) the number of hours the employee is scheduled to work in a 14-day period; or
 - (b) the number of hours the employee actually works on average in a 14- day period.
- c. Employees who receive CHFVA Sick Leave will have their CPHE Sick Leave bank supplemented by the difference between the number of hours already accumulated in their CHFVA Sick Leave bank on the date the Public Health Emergency is announced and 80 hours, such that the total amount of paid leave available is 80 hours.
- 3. Employees are only eligible to receive a supplement of CPHE Sick Leave once during a Public Health Emergency, even if the Public Health Emergency is amended, extended, restated, or prolonged.
 - 4. CPHE Sick Leave may be used from the day on which the Public Health Emergency is declared until four weeks after the official termination or suspension of the Public Health Emergency.
 - 5. An employee may use the full amount of supplementary CPHE Sick Leave prior to using any of the employee's previously-accrued PTO, sick leave, or CHFVA Sick Leave, as long as the supplementary leave is used for any authorized use of CPHE Sick Leave as described in Section 10-83.B.
 - 6. An employee's previously-accrued PTO, sick leave or CHFVA Sick Leave may be used for any purpose listed in Section 10-83.B. for the entire duration of the Public Health Emergency and for four weeks after the date of the official termination or suspension of the emergency declaration.

B. Authorized Uses of CPHE Sick Leave

- 1. An employee may use CPHE Sick Leave related to a Public Health Emergency for the employee's need to:
 - a. Self-isolate and care for oneself because the employee is diagnosed with a communicable illness that is the cause of a Public Health Emergency;
 - b. Self-isolate and care for oneself because the employee is experiencing symptoms of a communicable illness that is the cause of a Public Health Emergency;
 - c. Seek or obtain medical diagnosis, care or treatment if the employee is experiencing symptoms of a communicable illness that is the cause of a Public Health Emergency; or

- d. Seek preventative care concerning a communicable illness that is the cause of a Public Health Emergency.
2. An employee may use CPHE Sick Leave related to a Public Health Emergency to care for a family member who:
 - a. Is self-isolating after being diagnosed with a communicable illness that is the cause of a Public Health Emergency;
 - b. Is self-isolating due to experiencing symptoms of a communicable illness that is the cause of a Public Health Emergency;
 - c. Needs medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness that is the cause of a Public Health Emergency; or
 - d. Is seeking preventative care concerning a communicable illness that is the cause of a Public Health Emergency.
3. An employee may use CPHE Sick Leave if the employee's Appointing Authority, or a local, state or federal public official, or a health official having jurisdiction over the City and County of Denver, determines that the employee's presence on the job or in the community would jeopardize the health of others because:
 - a. The employee has been exposed to a communicable illness that is the cause of the Public Health Emergency; or
 - b. The employee is exhibiting symptoms of the communicable illness, regardless of whether the employee has been diagnosed with the communicable illness.
4. An employee may use CPHE Sick Leave to care for a family member if a local, state or federal public official having jurisdiction over the location where the family member's employer is located, or if the family member's employer, determines that the employee's family member's presence on the job or in the community would jeopardize the health of others because:
 - a. The employee's family member has been exposed to the communicable disease that is the subject of the Public Health Emergency; or
 - b. The employee's family member is exhibiting symptoms of the communicable illness, regardless of whether the family member has been diagnosed with the communicable illness.
5. An employee may use CPHE Sick Leave to care for a child or other family member when:
 - a. The child's or family member's care provider is unavailable due to a Public Health Emergency;

- b. The child's or family member's school or place of care has been closed by a local, state or federal public official due to a Public Health Emergency;
 - c. The child's or family member's school or place of care has been closed at the discretion of the school or place of care due to a Public Health Emergency, including if the school or place of care is physically closed but providing instruction remotely.
6. An employee may use CPHE Sick Leave due to an inability to work because the employee has a health condition that may increase susceptibility to, or risk of, a communicable illness that is the cause of the Public Health Emergency.

C. Documentation and Notice

- 1. An employee is not required to provide documentation in order to take CPHE Sick Leave.
- 2. An employee shall notify his or her supervisor of the need for CPHE sick leave as soon as practicable when the need for CPHE Sick Leave is foreseeable.

Section 10-85 Retaliation and Discrimination Prohibited
(Revised December 17, 2020; Rule Revision 65D)

- A. It is a violation of this rule to retaliate, interfere with, or discriminate against any current or former employee because that individual has:
- 1. Requested, taken, attempted to take, or supported another employee taking any type of paid sick leave;
 - 2. Filed a complaint with the Colorado Department of Labor and Employment or any court; or
 - 3. Participated or cooperated in an investigation, hearing, or proceeding brought by the Colorado Department of Labor and Employment.
- B. It is a violation of this rule to count paid sick leave taken by an employee as an absence that may lead to or result in discipline, termination, demotion, suspension, or any other retaliatory personnel action against the employee. Nothing in this rule, however, prevents an employee from being disciplined for using paid sick leave for purposes other than allowed herein.

Section 10-86 Confidentiality and Record Keeping
(Revised December 17, 2020; Rule Revision 65D)

- A. Any information regarding the health of an employee or the employee's family member, or regarding domestic abuse, sexual assault, or criminal harassment affecting an employee or employee's family member, must be treated as confidential and may not be disclosed to any other individual except the affected

employee, unless the employee provides written permission prior to such disclosure, or otherwise required by law.

- B. If the confidential information is in writing, it shall be maintained on a separate form and in a separate file from other personnel information.

Section 10-90 Care Hours

The City provides up to three-hundred twenty (320) hours of regular pay, referred to as “Care Hours,” within any rolling twelve-calendar month period for eligible employees. Care Hours are a form of salary or wage replacement and are not to be treated as in the same manner as PTO, annual or sick leave. Care Hours may only be used concurrently with an approved leave under a federal and/or state law referenced in Rule 10-90 B.

A. Ineligible Employees:

The following employees are ineligible for Care Hours:

1. Part-time employees who are regularly scheduled to work less than twenty (20) hours per week;
2. Employees occupying on-call, temporary, seasonal, or contract positions, or positions in which the incumbent is paid according to the community rate schedule;
3. Uniformed officers of the Denver Sheriff’s Department, Denver Police Department and the Denver Fire Department; and
4. Employees who have individually opted into the State of Colorado’s FAMILI benefits program pursuant to 8-13.3-514 C.R.S.

B. When Care Hours May Be Used

Eligible employees may use Care Hours concurrently with leave designated under these federal state or local laws. See Rule 12 **Accommodations for Disability, Pregnancy, Extended Illnesses or Injury and Leave** for qualifications and approval process for each federal and/or state law referenced.

1. Family and Medical Leave Act (“FMLA”).
2. Colorado Family Care Act (“FCA”)

10-91 Amount of Care Hours Available

- A. No more than annually, during any rolling twelve-calendar month period, an eligible full-time employee shall be eligible to receive up to three-hundred twenty (320) hours of paid Care Hours, measured from the first day approved Care Hours are taken. The twelve (12) month period measurement of Care Hours shall be calculated on a rolling forward basis, starting when Care Hours were first used by an employee.

- B. No more than annually, during any rolling twelve-calendar month period, an otherwise eligible part-time employee regularly scheduled to work at least twenty (20) hours per week shall be eligible to receive Care Hours as follows:
 - 1. An employee who is regularly scheduled to work between twenty (20) to twenty-nine (29) hours per week shall be eligible to receive up to one-hundred sixty (160) hours of Care Hours.
 - 2. An employee who is regularly scheduled to work between thirty (30) to thirty-nine (39) hours per week shall be eligible to receive up to two-hundred forty (240) hours of Care Hours.
- C. Care Hours are not to be considered hours worked when calculating overtime under Rule 9-91 B.

RULE 11
Additional Types of Leaves of Absences

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering additional types of leaves of absences beyond that covered by Rule 10 **Paid Leave** or Rule 12 **Leave and Accommodations for Pregnancy and Extended Illnesses or Injuries**.

Section 11-10 Leave Defined

Leave: Any absence during regularly scheduled work hours. The following types of leave are covered in this rule:

- A. Authorized;
- B. Unauthorized;
- C. Leave for victims of violence;
- D. Budget-required furlough;
- E. Military (extended).

Section 11-15 Designees

Appointing authorities, including the Office of Human Resources (“OHR”) Executive Director, may delegate any authority given to them under this rule to a subordinate employee.

Section 11-20 General Provisions

11-21 Authorized Additional Types of Leaves of Absences

When it is in the interest of the City, appointing authorities may permit the use of leave under this Rule 11 **Additional Types of Leaves of Absences** by employees who either do not have or have exhausted FMLA, ADA, or when USERRA does not apply. Authorized leave under this Rule 11 **Additional Types of Leaves of Absences** shall not last longer than 180 consecutive days and shall not be considered a break in service for purposes of calculating length of service.

11-22 Unauthorized Additional Types of Leaves of Absences

- A. Absences from work shall be treated as unauthorized, unpaid leave:
 - 1. When an employee has not requested permission to use a type of leave for which permission is required; or
 - 2. When a leave request has been denied; or

3. When an employee has not complied with reporting procedures; or
 4. When the leave is not otherwise authorized under these rules.
- B. Employees on unauthorized, unpaid leave may be subject to discipline, up to and including dismissal.

11-23 Exempt and Non-exempt Employees

- A. An exempt employee on leave under this Rule 11 **Additional Types of Leaves of Absences** shall have his or her pay reduced on an hourly basis for the duration of the absence when the absence is less than a day and is due to sickness or personal reasons, and:
1. The employee did not request leave; or
 2. A request for leave was denied; or
 3. The employee has no available leave; or
 4. The employee requested and was granted unpaid leave.
- B. Non-exempt employees on leave under this Rule 11 **Additional Types of Leaves of Absences** shall receive no pay for the duration of the absence.

11-24 Maintenance of Benefits During Additional Types of Leaves of Absences Under This Rule 11

- A. If the employee has worked less than one year and a minimum of 1,500 hours when the leave under this Rule 11 **Additional Types of Leaves of Absences** begins:
1. The first thirty (30) consecutive calendar days of authorized, voluntary, leave under this Rule 11 **Additional Types of Leaves of Absences** in a calendar year, shall have no effect on the following:
 - a. City contributions to medical, dental, and life insurance; or
 - b. Accrual of paid time off (PTO), sick and vacation leave, and holiday eligibility.
 2. After thirty (30) consecutive calendar days of authorized, voluntary leave under this Rule 11 **Additional Types of Leaves of Absences** in a calendar year:
 - a. The employee will pay 100% of the premium (both of the Employee and Employer portions) for all benefit elections for the duration of the Additional Types of Leave of Absences.
 - b. If the employee chooses to maintain their benefit elections, they must submit a check to the Manager of Finance to pay for premiums.

- c. Alternatively, at the start of an authorized Additional Types of Leaves of Absences an employee may waive any or all of their benefit elections. Upon return to work the employee may re-enroll in any City-offered benefit election, while following any plan rules.
 - d. An employee's failure to pay the continuing cost of benefit elections by check will result in the arrears balance being taken from their first paycheck upon return to work or from their leave payout upon termination from the City.
- B. If the employee has worked at least one year, and a minimum of 1560 hours when the leave under this Rule 11 **Additional Types of Leaves of Absences** begins:
 - 1. The first thirty (30) consecutive calendar days of authorized, voluntary leave under this Rule 11 **Additional Types of Leaves of Absences** in a calendar year, shall have no effect on the following:
 - a. City contributions to medical, dental, and life insurance; or
 - b. Accrual of paid time off (PTO), sick and vacation leave, and holiday eligibility.
 - 2. After thirty (30) consecutive calendar days of authorized, voluntary leave under this Rule 11 **Additional Types of Leaves of Absences** in a calendar year:
 - a. The City will continue to pay its portion of medical benefits for the duration of the Additional Types of Leave of Absences, while the employee pays only the employee portion of the premium.
 - b. The employee will pay 100% of the premium (both the Employer and Employee portions) for all other benefits elections for the duration of the Additional Types of Leave of Absences.
 - c. The employee must first use any authorized accumulated leave balances (see Rule 10 Paid Leave) to pay for their portion of the medical premium and/or 100% of the other plan premiums.
 - d. If the employee chooses to maintain their benefit elections, but does not have accrued leave, they must submit a check to the Manager of Finance to pay for premiums.
 - e. Alternatively, at the start of an authorized Additional Types of Leaves of Absences an employee may waive any or all of their benefit elections. Upon return to work the employee may reenroll in any City-offered benefit election, while following any plan rules
 - f. An employee's failure to pay the continuing cost of benefit elections by check will result in the arrears balance being taken from their first paycheck upon return to work or from their leave

payout upon termination from the City.

3. Employees will no longer be able to earn PTO, sick and vacation leave, or paid holidays.

11-25 Other Provisions Regarding Extended Authorized Additional Types of Leaves of Absences

- A. A period of authorized leave shall not constitute a break in service.
- B. A period of authorized unpaid leave occurring during an employee's probationary period shall not be counted as part of that period. The employee to whom such leave has been granted will resume his or her probationary period upon returning from the period of unpaid leave.
- C. At the expiration of a period of authorized unpaid leave, the employee shall return to the position and classification he or she held before going on leave. Failure to report promptly at the expiration of a period of unpaid leave shall be considered a resignation.

11-26 Leave for Victims of Violence

Employees may use up to three days of unpaid leave to address issues arising from violence the employee has suffered (as defined in Executive Order 112), including but not limited to, obtaining a restraining order, obtaining medical care or counseling, locating safe housing, or preparing for or attending legal proceedings. The employee may elect to use available paid leave, instead of unpaid leave, to cover the absence. Appointing authorities may authorize the use of additional leave, or temporarily adjust an employee's work schedule to allow a victim of violence to obtain necessary medical care, housing, counseling, legal, or other related assistance.

11-27 Budget Required Furlough

(Revised September 17, 2020; Rule Revision Memo 58D)

The following rules apply when the Mayor of the City and County of Denver decides to furlough city employees, or to allow appointing authorities to furlough employees of their agencies, due to budgetary reasons.

- A. This Rule is intended to comply with the Fair Labor Standards Act regulation 29 C.F.R. § 541.710, which permits furloughs for budgetary reasons without affecting the exemption status of an overtime exempt employee except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced. Exempt employees become non-exempt employees during any week that a furlough day is taken. Furlough hours are not considered hours worked for purposes of calculating overtime.
- B. Furlough days are based on an eight-hour workday. In order to ensure the cost savings that furloughs are intended to achieve, during the workweek in which an employee takes one or more furlough days, the furlough hours taken and hours actually worked plus any paid leave taken (including holidays and comp time

used) should not total more than forty (40) hours. An employee who exceeds this 40-hour limitation will not get full credit for the furlough hours taken in that week. Instead, those furlough hours will be reduced in proportion to the overage and have to be made up on another date, preferably within the same payroll period.

- C. Scheduled furlough days declared by the Mayor will be taken in eight (8) hour increments, unless an employee receives supervisory approval to work part of the day and make up the remaining hours at a later time, preferably within the same payroll period. The Department of Finance will determine how furloughs declared by the Mayor, other than scheduled furlough days, will be implemented, including whether they may be taken in less than eight (8) hour increments. When the Mayor has allowed an appointing authority to furlough employees, the appointing authority may determine how such furloughs will be implemented.
- D. The Mayor may exempt certain employees and/or classifications from mandatory furloughs in order to maintain essential City services or for other necessary business reasons.
- E. During the period of time in which the Mayor has declared mandatory furloughs, employees may take additional voluntary furlough days with the prior approval of the employee's appointing authority. Except as otherwise provided, the same rules apply to voluntary furloughs that apply to mandatory furloughs.
- F. If the Mayor decides to impose, or allows an appointing authority to impose, an extended furlough of 30 consecutive days or more, the number of consecutive furlough days taken shall not count towards the probationary period of employees on employment probation when placed on the extended furlough. Such employees will resume their probationary period upon returning from the extended furlough. This suspension of the probationary period during an extended furlough shall not be considered an extension of employment probation under Rule 5-34E.
- G. If an employee on extended furlough of 30 consecutive days or more obtains other employment, the employee must promptly submit to their supervisor and/or OHR either a request for approval of outside employment in accordance with the Denver Code of Ethics or a notice of resignation effective no later than one day prior to the first day of their new employment.
- H. Maintenance of benefits: (Revised December 17, 2020, Rule Revision Memo 63D)
 - 1. During furloughs of three (3) consecutive months or less, the City will continue to provide:
 - a. employees with accrued PTO, or sick and vacation leave, and
 - b. paid holiday leave for observed holidays, even if the workday immediately preceding and/or immediately following the holiday is a scheduled furlough day, and
 - c. payment of the employer's share of medical, dental, and life

insurance premiums.

2. For furloughs exceeding one (1) month, the employee must arrange for payment of the employee's portion of the employee's medical, dental, and life insurance premiums as well as supplemental insurance coverages such as vision and supplemental life insurance by executing a deduction agreement allowing the City to make monthly deductions from the employee's accrued paid leave (PTO or vacation leave) and holiday leave accruals equal to the amount of employee owed premiums. Upon exhaustion of paid leave, employees must submit a check payable to the Manager of Finance to pay for premiums no later than the first day of the month in which benefits accrue. The employee's failure to pay premiums will result in coverage being cancelled. Insurance coverages that are cancelled cannot be reinstated until the next open enrollment period.
3. For furloughs exceeding three (3) consecutive months, benefits will be administered as follows:
 - a. City contributions to the employer's portion of medical premiums will continue for the length of the stability period as defined in DRMC Sec. 18-172(2). The employee must arrange for payment of the employee's portion of the employee's medical benefits through the deduction agreement referred to above and upon exhaustion of paid leave, employees must submit a check payable to the Manager of Finance to pay for premiums no later than the first day of the month in which benefits accrue. The employee's failure to pay premiums will result in coverage being cancelled. Insurance coverages that are cancelled cannot be reinstated until the next open enrollment period.
 - b. City contributions to dental, and life insurance shall be discontinued. An employee may continue dental, and life insurance, as well as any supplemental insurance coverages (i.e. vision and supplemental life), by submitting a check payable to the Manager of Finance to pay for premiums no later than the first day of the month in in which benefits accrue. The employee's failure to pay premiums will result in coverage being cancelled. Insurance coverages that are cancelled cannot be reinstated until the next open enrollment period.
4. For furloughs extending more than twelve (12) consecutive months, benefits will be administered as follows:
 - a. City contributions to the employer's portion of medical premiums will be discontinued. An employee may continue to receive medical benefits by submitting a check payable to the Manager of Finance to pay for premiums no later than the first day of the month in in which benefits accrue. The employee's failure to pay premiums will result in coverage being cancelled. Insurance coverages that are cancelled cannot be reinstated until the next

open enrollment period.

- b. An employee may continue dental, and life insurance, as well as any supplemental insurance coverages (i.e. vision and supplemental life), by submitting a check payable to the Manager of Finance to pay for premiums no later than the first day of the month in which benefits accrue. The employee's failure to pay premiums will result in coverage being cancelled. Insurance coverages that are cancelled cannot be reinstated until the next open enrollment period.
5. If an employee resigns employment or is laid off from the City during or after an extended furlough of 30 consecutive days or more, the City will deduct any unpaid employee benefit premiums from the employee's accrued paid leave and holiday leave accrual prior to the payout of those amounts as addressed in CSA Rules 10-26 and 10-36.
- I. Nothing herein precludes the Mayor from designating specific furlough days or otherwise determining how to implement furloughs.

Section 11-30 Extended Military Leave

- A. Definition of Extended Military Leave: Employees who continue in military service beyond the initial equivalent of three (3) weeks of work on the employee's regular work schedule for which paid military leave is allowed under Rule 10 **PAID LEAVE** shall be placed on extended military leave.
- B. This rule is intended to comply with and be interpreted consistently with the Uniformed Services Employment and Reemployment Rights Act ("USERRA") and Colorado Revised Statutes §§ 28-3-601, *et seq.* To the extent an issue is not addressed in this rule, or to the extent this rule is inconsistent with the USERRA, or any other federal or state law, the USERRA and its corresponding regulations shall govern.
- C. Requests for extended military leave may be made verbally or in writing, and shall be made in advance, when possible. If an employee is unable to provide advance notice due to military necessity, the employee may give notice after starting duty.
- D. Employees who are called to active military duty with written orders for services exceeding one hundred and seventy-nine (179) days because of war or national emergency may be eligible for a military pay differential.
- E. Employees who take extended military leave will be reinstated upon their return to work in the position the employee held at the time their military service began or a position of like seniority, status, and pay if such a position is available at the same salary that the employee would have received if the employee had not taken the leave.

11-31 Granting Extended Military Leave

- A. Duration:

Extended military leave shall be granted for the duration of active military service not to exceed five (5) years plus ninety (90) days from the date of discharge, subject to exceptions set forth in USERRA and its corresponding regulations.

B. Maintenance of Benefits:

1. If the employee has extended military leave:
 - a. The first thirty (30) consecutive calendar days of military leave in a calendar year, shall have no effect on the following:
 - i. City contributions to medical, dental, and life insurance; or
 - ii. Accrual of paid time off (PTO), sick and vacation leave, and holiday eligibility.
 - b. After thirty (30) consecutive calendar days of military leave in a calendar year:
 - i. The City will continue to pay its portion of medical benefits for the duration of the military leave, while the employee pays only the employee portion of the premium.
 - ii. The employee will pay 100% of the premium (both the Employee and Employee portions) for all other benefits elections for the duration of the military leave.
 - iii. The employee must first use any authorized accumulated leave balances (see Rule 10 Paid Leave) to pay for their portion of the medical premium and/or 100% of the other plan premiums.
 - iv. If the employee chooses to maintain their benefit elections, but does not have accrued leave, they must submit a check to the Manager of Finance to pay for premiums.
 - v. Alternatively, at the start of the extended military leave, the employee may waive any or all of their benefit elections. Upon return to work the employee may re-enroll in any City-offered benefit election, while following any plan rules.
 - vi. An employee's failure to pay the continuing cost of benefit elections by check will result in the arrears balance being taken from their first paycheck upon return to work or from their leave payout upon termination from the City.

C. Employees may use any available paid leave for some or all of their extended military leave.

D. Break in service:

Extended military leave shall not constitute a break in service.

E. Completion of probationary period:
(Revised October 19, 2018; Rule Revision Memo 46D)

A probationary employee who is on extended military leave before or during the employee's probationary period shall be required to complete the remainder of their probationary period when the employee returns to work.

11-32 Return from Extended Military Leave

Employees returning from military leave (whether paid or extended) after an absence of ninety (90) days or less shall return to their former position. Employees returning after ninety-one (91) days or longer shall return to their former position or a job of equal status and pay, subject to the following provisions:

A. Due date for notice of return:

Upon completing military service, an employee on military leave (whether paid or unpaid) must notify his or her appointing authority of the employee's intent to return to work. The amount of notice required depends on the amount of time served.

1. Employees who served longer than one hundred-eighty (180) days shall give notice within ninety (90) days after completing service.
2. Employees who served thirty-one (31) to one hundred-eighty (180) days shall give notice within fourteen (14) days after completing service.
3. Employees who served less than thirty-one (31) days shall return to work on the first regularly scheduled work day, after completing service, traveling home, and an 8-hour rest period.

B. Certificate of satisfactory completion of military service:

A return from military leave shall be conditional upon submission of a certificate confirming release from active duty under honorable conditions. If a person does not provide satisfactory documentation because it is not readily available or does not exist, the employer still must promptly reemploy the person. However, if, after re-employing the person, documentation becomes available that shows one or more of the reemployment requirements were not met, the employer may terminate the person and any rights or benefits that may have been granted.

C. Effect of hospitalization for service connected medical condition:

In the event that the employee was hospitalized after military discharge for medical conditions which occurred during the military service, the employee's unpaid military leave shall be extended up to two (2) years. Application for return

from unpaid military leave must be made within ninety (90) days after the employee's medical provider releases him or her to return to work. Extensions beyond two (2) years may be granted.

D. Qualifications for return from military service:

The employee must be physically and mentally qualified and possess the necessary skills, knowledge and/or training to perform the essential functions of the position to which the employee is returning with or without reasonable accommodations. The City will provide appropriate training to returning employees.

E. Effect of service connected disability:

If the employee is not qualified to perform the essential functions of the position with or without reasonable accommodations by reason of disability sustained during active military service, the appointing authority may transfer the employee to any other available position, the duties of which the employee is qualified to perform and which will provide like seniority, status and pay, or the nearest approximation thereof, as the employee achieved in the position from which he or she was granted military leave.

F. Effect of failure to give notice for return:

Failure to give notice for return from unpaid military leave within the time limits stated may be considered a resignation.

11-33 Military Pay Differential

A. Career Service employees who are called to active military duty in time of war or national emergency are eligible for a military pay differential as provided by the Denver Revised Municipal Code.

B. A written request for military pay differential shall be made by an eligible employee to the employee's department or agency as soon as possible after the employee's return to City employment using the application form provided by the OHR. Requests for military pay differential may also be made while the employee is on military leave.

C. The employee shall provide copies of the following documents:

1. Written military orders for reporting and/or discharge;
2. Leave and earnings statements from the military;
3. All military pay vouchers, including vouchers for temporary duty and travel; and
4. Any other documentation deemed necessary to process the request by the OHR or the Department of Finance.

- D. Any overpayment of funds to the employee shall be reimbursed to the City in accordance with the City's Fiscal Accountability Rules.

RULE 12
ACCOMMODATIONS FOR DISABILITY, PREGNANCY,
EXTENDED ILLNESS OR INJURY, AND LEAVE
(Revised June 24, 2019; Rule Revision Memo 54D)

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering accommodations and extended time off for pregnancy, a pregnancy-related condition, physical recovery from childbirth, placement of a child for adoption, foster care, guardianship, and extended illness or injury, or a disability.

Section 12-10 Topics Covered by this Rule

- A. Family and Medical Leave Act (“FMLA”);
- B. Colorado Family Care Act (“FCA”);
- C. Military Caregiver leave;
- D. Salary continuation and Workers’ Compensation;
- E. Americans with Disabilities Act (“ADA”) accommodations and the ADA Interactive Process; and
- F. Leave and Accommodations for Pregnancy and Childbirth in compliance with the Pregnancy Discrimination Act.

Section 12-15 Designees

Appointing authorities, including the Office of Human Resources (“OHR”) Executive Director, may delegate any authority given to them under this rule to a subordinate employee.

THE FAMILY and MEDICAL LEAVE ACT (“FMLA”)

Section 12-20 FMLA Policy

It is the policy of the Career Service Board to provide leave under the FMLA to eligible employees. The purpose of FMLA leave is to provide up to twelve weeks of job-protected leave in a designated twelve-month period to eligible employees for specified family members and medical reasons. This rule is intended to comply with and be interpreted consistent with the FMLA and its corresponding regulations. To the extent an issue is not addressed herein, or if there is a conflict with a Career Service Rule, the FMLA and its corresponding regulations shall govern.

12-21 When Leave under the FMLA May be Used

FMLA leave shall only be available:

- A. For the birth of and bonding with a newborn child of the employee (including a newborn child born into a domestic partnership or civil union);

- B. For placement of a child with the employee, the employee's domestic partner (as defined in Rule 10 PAID LEAVE) or the employee's partner in a civil union (as defined in Rule 10 PAID LEAVE) for adoption, foster care or legal guardianship;
- C. To care for an employee's parent (or individual who acted as a parent to the employee), spouse, or child with a qualifying serious health condition, as defined in the FMLA and its corresponding regulations;
- D. To take leave when the employee is unable to perform the functions of the employee's job because of a qualifying serious health condition; or
- E. For any other reason authorized by the FMLA.

12-22 Eligibility for FMLA leave

An employee may be eligible for FMLA leave if the employee has:

- A. Been employed by the City for at least twelve (12) months in the last seven (7) years; and
- B. Worked at least twelve hundred fifty (1,250) hours in the twelve (12) months immediately preceding the beginning of the FMLA leave.

12-23 Requesting FMLA leave

(Revised December 19, 2022; Rule Revision Memo 82D)

- A. An employee may expressly request FMLA leave, or may merely state that he or she needs leave for a reason which the appointing authority knows is a qualifying reason for FMLA leave. In either instance, the appointing authority shall notify the employee that the leave may qualify as FMLA leave and refer the employee to their designated leave representative.
- B. In any situation where the need for FMLA leave is foreseeable, an employee shall provide thirty (30) days' notice or notice as soon as is practicable.
- C. In any situation where the need for FMLA leave is not foreseeable, the employee shall provide such notice as soon as is practicable. Such notice may be provided by the employee or the employee's spokesperson if the employee is unable to do so personally.
- D. An employee requesting FMLA leave must provide to their designated leave representative all information necessary to determine if such leave is appropriate, including:
 1. The reasons for the leave so as to allow for determining if the conditions identified in subsection 12-21 of this Rule have been met.
 2. The anticipated start of the leave.
 3. The anticipated duration of the leave.

4. A health care provider certification on a form provided by the appointing authority consistent with the FMLA. Information provided to the employee's leave representative and/or appointing authority regarding an employee's FMLA leave shall be maintained in a confidential file separate from the employee's personnel file.
- E. A request for FMLA leave which does not satisfy the conditions identified in subsection 12-21 of this Rule may be denied or delayed.
- F. A denial of a request for FMLA leave shall not preclude granting PTO or sick leave if the conditions identified in RULE 10 PAID LEAVE are met.

12-24 Use of FMLA leave

(Revised December 19, 2022; Rule Revision Memo 81D)

- A. The twelve (12) month period shall begin when FMLA leave was first used by an employee. No more than twelve (12) workweeks of FMLA leave may be used in a designated twelve (12) month period.¹ Exception:
 1. An employee may be able to use up to twenty-six (26) workweeks of leave under the FMLA to care for a covered servicemember, as defined in the FMLA and corresponding federal regulations, with a serious injury or illness.
- B. FMLA leave shall be granted consecutively, intermittently or on a reduced leave schedule, as provided for under the FMLA. However, if an employee requests FMLA leave intermittently or on a reduced leave schedule after the birth or placement of a child for adoption, or foster care or legal guardianship, such leave shall be granted only if it is consistent with the reasonable operational necessity of the agency, as determined by the appointing authority.
- C. It is the appointing authority's responsibility to designate qualifying leave as FMLA leave and the appointing authority shall notify the employee of such designation and provide other required information about FMLA leave. An employee cannot refuse to allow the appointing authority to designate qualifying leave as FMLA leave.
- D. FMLA leave is unpaid leave. An employee may elect to use available paid leave, which will run concurrently with unpaid FMLA leave, subject to the limitations in this Rule 12 on the use of paid leave while on salary continuation leave or Workers' Compensation leave.

¹ Employees needing additional leave may be entitled to additional leave under the ADA. See 12-29(d).

12-25 Secondary employment during FMLA leave

Appointing authorities may deny secondary employment during FMLA leave if the secondary employment violates the restrictions of the employee's FMLA leave.

12-26 Investigation of Use of FMLA leave

Appointing authorities may investigate the use of FMLA leave consistent with the FMLA, FCA, and their corresponding regulations. This may include requiring a second opinion and third opinion, if appropriate, and considering information that is inconsistent with an employee's FMLA leave request. Misuse of FMLA leave may be cause for disciplinary action up to and including dismissal. An appointing authority may not discipline an employee for appropriate use of FMLA leave.

12-27 Re-assignment related to the FMLA (Revised June 24, 2019; Rule Revision Memo 54D)

If an employee needs intermittent leave or leave on an established reduced leave schedule that is foreseeable based on the planned medical treatment for the employee or the employee's parent (or individual who acted as a parent to the employee), spouse, or child, or if the appointing authority agrees to permit intermittent or reduced schedule leave for bonding with a newborn child or for placement of a child for adoption or foster care, the appointing authority may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and for which the modified schedule is less disruptive to the business and/or operational needs of the department or agency than the employee's regular schedule. (See 12-64 for reassignment under the ADA).

12-28 Maintenance of Benefits

- A. During any leave, the City must maintain the employee's health insurance coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously working during the entire leave period.
- B. It shall be the responsibility of an employee on unpaid leave to provide that share of payment(s) necessary to maintain health insurance coverage.

12-29 Return from FMLA leave

- A. An employee returning from FMLA leave due to their own qualifying serious health condition shall provide a certification from the employee's health care provider that the employee is able to resume work. Additionally, an employee may be required to report periodically on the employee's status and intent to return to work.

- B. An employee returning from FMLA leave shall be returned to the same position the employee held when leave began or to an equivalent position which is defined by the FMLA regulations as a position with equivalent pay, benefits and other terms and conditions of employment.
- C. An employee need not be re-instated if the employee would not otherwise have been employed at the time re-instatement is requested.
- D. If the employee is unable to return to work at the conclusion of FMLA leave, the appointing authority shall initiate the ADA Interactive Process as provided in this Rule 12, within twenty (20) days of the expiration of the employee's FMLA leave, unless the employee is also on salary continuation leave or Workers' Compensation leave.

Section 12-30 Colorado Family Care Act Leave

- A. The FCA provides unpaid leave to eligible employees to care for their partners in a civil union or domestic partnership who have a qualifying serious health condition and is administered consistent with the FMLA. See Rules 12-20 through 12-29 above for eligibility and conditions.
- B. An employee may be able to use up to twenty-four (24) workweeks of leave if the employee is eligible to use FMLA leave and FCA leave.

Section 12-40 Military Caregiver Leave

Military caregiver leave provides unpaid leave to eligible employees to care for a covered service member with a serious illness or injury. Military caregiver leave is provided under the FMLA and is administered consistent with the FMLA except as provided in this section.

A. Definitions

1. A current covered service member with a serious illness or injury is:
 - a. a current member of the Armed Forces, including members of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; and
 - b. has a serious illness or injury incurred or aggravated in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of their office, grade, rank, or rating.
2. A veteran covered service member with a serious injury or illness is:
 - a. a veteran discharged under conditions other than dishonorable within the five-year period before the employee first takes military

caregiver leave to care for that veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness; and

- b. has a serious illness or injury incurred or aggravated in the line of duty on active duty that rendered the servicemember unable to perform the duties of their office, grade, rank, or rating, or a condition for which the veteran received a VASRD of fifty percent or greater, or a condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service or would do so absent treatment, or an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
- B. Qualifying family members for military caregiver leave are as follows in this order:
1) any blood relative whom the covered servicemember has designated in writing; if none, then 2) all blood relatives with legal custody; if none, then 3) all brothers and sisters; if none, then 4) all grandparents; if none, then 5) all aunts and uncles; if none then 6) all first cousins.
 - C. Eligible employees who meet the FMLA criteria may take a combined total of 26 workweeks of leave for any FMLA-qualifying reason other than to care for a covered servicemember.
 - D. To be certified for military caregiver leave, an eligible employee must provide additional documentation and certifications beyond what is required for a standard FMLA leave.

Section 12-50 Salary Continuation Leave and Workers' Compensation Leave

12-51 Definitions (for the purposes of this Section 12-30)

- A. Disability: The physical inability of an eligible employee to perform the duties of their position, or any other position with the City.
- B. Eligible employee: Any Career Service employee except:
 - 1. Employees occupying on-call positions; and
 - 2. Employees who hold positions in classifications in the Sheriff pay tables (Deputy Sheriff, Deputy Sheriff Sergeant, Deputy Sheriff Captain, Deputy Sheriff Major, and Deputy Sheriff Division Chief). (Revised April 9, 2021; Rule Revision Memo 66D)

12-52 Salary Continuation Leave

- A. 1. The City provides paid disability leave (hereinafter "salary continuation leave") at the rate of eighty percent (80%) of an employee's gross salary for up to ninety (90) consecutive calendar days from the date of injury.

2. An eligible employee is entitled to salary continuation leave if the employee has a disability as a result of an occupational injury or occupational disease arising out of and in the course and scope of employment with the City.
- B. An employee receiving salary continuation leave shall not be permitted to use other available paid leave.
- C. Salary continuation leave will end on the employee's last day as a City employee or if the employee is no longer eligible for temporary benefits under the Workers' Compensation Act of Colorado, as amended, Title 8, Articles 40-47, C.R.S. ("the Act").

12-53 Workers' Compensation Leave

- A. An employee who remains unable to return to work in their job without accommodation, or to modified duty after salary continuation leave has been exhausted, and is receiving temporary disability benefits under the provisions of the Act, will be permitted to use Workers' Compensation leave for absences from work resulting from the employee's occupational injury or occupational disease arising out of the course and scope of employment with the City, until it is determined that the employee is no longer eligible to receive temporary disability benefits pursuant to the Act.
- B. Workers' Compensation leave is unpaid leave, except to the extent an employee elects to use available paid leave. An employee may use any available paid leave to make up the difference between eighty percent (80%) of the employee's gross salary and the temporary disability benefits paid under the provisions of the Act.

12-54 Applicability of the FMLA

- A. The department or agency shall designate an employee's salary continuation leave and/or Workers' Compensation leave as FMLA leave if the requirements of the applicable Career Service Rules and Federal statutes and regulations are met.
- B. If an employee's salary continuation leave and/or Workers' Compensation leave is also designated as FMLA leave, the salary continuation leave and/or Workers' Compensation leave shall run concurrently with the FMLA leave.

12-55 Maintenance of Benefits

An employee who is absent from work on salary continuation leave or Workers' Compensation leave is:

- A. Eligible to have the City continue paying its share of the employee's health, dental, and life insurance premiums during the period of salary continuation and/or Workers' Compensation leave, so long as the employee continues to pay their share of the insurance premiums.

- B. Eligible to earn paid leave as provided in these rules;

12-56 Termination of Workers' Compensation Leave Eligibility

- A. Employees who are no longer eligible for temporary benefits under the Act are not eligible to continue receiving Workers' Compensation leave.
- B. If the employee's permanent restrictions prohibit the employee from returning to work full-time and/or full-duty after having reached Maximum Medical Improvement ("MMI"), the City shall initiate the ADA Interactive Process as provided in this Rule 12, within twenty (20) days of the expiration of the employee's eligibility for salary continuation leave or Workers' Compensation leave, unless the employee is also on FMLA leave.
- C. Employees who are still receiving temporary benefits under the Act may lose their eligibility for Workers' Compensation leave before reaching MMI if it is determined that they will be unable to return to work in the employee's position. Such determination shall be made by the ADA Coordinator, after consulting with the City Attorney's Office and the City's Risk Management Unit. Once this determination is made, the City shall initiate the ADA Interactive Process as provided in this Rule 12, within twenty (20) days of the expiration of the employee's eligibility for salary continuation leave or Workers' Compensation leave, unless the employee is also on FMLA leave.

The AMERICANS with DISABILITIES ACT (ADA)

(Revised June 24, 2019; Rule Revision Memo 54D)

Section 12-60 ADA

12-61 Policy

- A. It is the policy of the City to provide equal employment opportunity to qualified individuals with disabilities and to ensure such individuals are not subjected to discrimination. This rule is intended to comply with and be interpreted consistently with the Americans with Disabilities Act of 1990 ("ADA"), as amended. In case of a conflict between this rule and the ADA (and its corresponding regulations), the ADA will control. Additional information about the ADA may be found on the Equal Employment Opportunity Commission's website, www.eeoc.gov.
- B. No appointing authority, official, supervisor or employee shall discriminate against a qualified individual with a disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, or any terms, conditions, or privileges of employment.
- C. For purposes of the ADA, nondiscrimination includes providing reasonable accommodations to applicants and employees.

12-62 ADA Definitions

- A. ADA Coordinator: Person or persons designated by the City OHR Executive Director to act on behalf of OHR with respect to requests for accommodation under the ADA in the Interactive Process (IAP).
- B. Vacant position: An empty position that a department or agency is authorized to fill and intends to fill.

12-63 Reasonable Accommodation and the Interactive Process (IAP)

A. Reasonable Accommodation

A department or agency shall provide a reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee, unless it can be demonstrated that the accommodation would impose an undue hardship on the operation of the department or agency, or with a reasonable accommodation, the employee would still pose a direct threat to any person.

Determinations with regard to employee reasonable accommodations shall be made on a case by case basis through the IAP. The process for accommodating applicants can be found in Rule 3 **RECRUITMENT AND SELECTION**.

B. The Interactive Process (IAP)

1. The IAP shall be a flexible, informal process that involves one or more representatives of the employee's department or agency who are knowledgeable about the essential functions of the employee's job, the employee, and the ADA Coordinator, and requires the good faith participation of all parties. The ADA Coordinator may terminate the IAP if the employee fails to cooperate in the process.
2. The City shall initiate an IAP when:
 - a. An employee provides notice that the employee needs a reasonable accommodation to perform the essential functions of the employee's position; or
 - b. The employee's department or agency has actual or constructive notice that an employee may have a disability for which the employee needs reasonable accommodation, or a fitness for duty examination has identified that an employee may need a reasonable accommodation.
3. The purpose of the IAP shall be to determine if:
 - a. The employee is a qualified individual with a disability within the meaning of the ADA;

- b. If so, whether the employee requires a reasonable accommodation to perform the essential duties of their job, and to discuss the range of potential accommodations; and
 - c. If the individual can't can be reasonably accommodated in their current position the parties will discuss the potential for reassignment to another job (See Rule 12-64).
4. In order to make this determination, the ADA Coordinator may request and review relevant medical records and other documentation in the possession, custody, or control of the employee's health care providers that directly relate to the matter in question. The ADA Coordinator may request that the employee obtain an independent medical evaluation for the purpose of gathering information needed to make this determination. Such examinations and evaluations shall be reasonable in scope (targeted to the matter in question) and paid for by the department or agency where the employee is presently employed.
 5. If the employee is determined to have a disability as defined in the ADA, the ADA Coordinator, department or agency, and the employee shall endeavor to identify any reasonable accommodations the employee may need to be able to perform the essential functions of their position. The preferred option always shall be a reasonable accommodation that allows the employee to remain in their existing job, however job reassignment may be explored as the reasonable accommodation of last resort (See Rule 12-64).

12-64 Re-assignment:

- A.
 1. If the ADA Coordinator determines that an employee with a disability cannot be reasonably accommodated in their current position and the employee is interested in remaining employed with the City, the ADA Coordinator shall explore reassignment to a vacant position for which the employee is qualified as a possible reasonable accommodation.
 2. This determination shall be communicated in writing to the employee as soon as possible after it has been made.
 3. The ADA Coordinator shall look for positions that are vacant and become vacant during the three (3) months immediately following this written communication. The leave team may extend the three-month period only in cases involving extenuating circumstances.
 4. The ADA Coordinator's priority is to identify vacant positions that are equivalent to the employee's current position in terms of pay and benefits, first in the employee's department or agency, and then in other departments or agencies.
 5. If no equivalent positions exist, the ADA Coordinator's next priority is to identify vacant positions of lower pay and benefits, first in the employee's department or agency, and then in other departments or agencies. An

employee with a disability may decline a reassignment appointment that is a demotion and request that the ADA Coordinator continue looking for vacant positions within the three-month time period.

6. The ADA Coordinator shall analyze the employee's specific experience, skills and background, and the specific job duties of the vacant position. The employee does not need to be the best-qualified individual for the position in order to be re-assigned to it.
 7. The ADA Coordinator shall provide the employee with information about all vacancies for which the employee:
 - a. Meets the minimum education, experience and licensing or certification requirements; and
 - b. Is able to perform the essential functions with or without accommodations.
 8. The employee may express their preference regarding the selection of a re-assignment position. However, the ADA Coordinator chooses the re-assignment position to be offered to the employee.
 9. If no vacant positions become available during the three-month reassignment period, the ADA Coordinator will, in most instances, terminate the IAP and disqualification proceedings may be initiated by the employee's department or agency.
 10. The ADA Coordinator shall terminate the IAP before the end of the three-month period if the employee withdraws their request for re-assignment, or if the employee accepts a new position through re-assignment.
- B. Reassignment is not available:
1. To a position that constitutes a promotion. This does not preclude an employee from applying for promotions within the Career Service; and (Revised August 19, 2021; Rule Revision 69D)
 2. To job applicants who are not currently City employees.
- C. A department or agency to which an employee with a disability is being re-assigned is required to cooperate with the re-assignment process coordinated by the ADA Coordinator and accept the re-assignment of that employee through the IAP. However, the department or agency may file a request to the OHR Executive Director to review the re-assignment placement within five (5) calendar days of the re-assignment notice if the department or agency reasonably believes, based upon the employee's qualifications or other factors, that the

employee will not be able to perform the essential functions of the position with or without reasonable accommodation.

- D. If an employee is re-assigned to either an equivalent or demotion position, the employee shall continue to receive the pay rate he or she earned in the former position 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.
- E.
 - 1. The department or agency shall take all necessary steps to train the re-assigned employee in the duties of the position re-assigned, as it would do with any new employee.
 - 2. Re-assigned employees shall be provided any reasonable accommodation necessary for the employees to perform the essential functions of the new position.
- F.
 - 1. If an employee with a disability is re-assigned to a vacant position and the department or agency subsequently determines that the employee with a disability is unable to perform the essential functions of the position, with or without reasonable accommodation, the IAP will be resumed from the beginning.
 - 2. The IAP need not be resumed if the employee has performance problems in the position that are unrelated to the employee's disability, or if the employee is dismissed as a corrective measure for misconduct.

12-65 Re-assignment of Classified Service Employees

- A. A Classified Service employee (police officer or fire fighter) with a disability is eligible to seek re-assignment to a vacant Career Service position as a form of reasonable accommodation if, after an interactive process to consider options to accommodate that individual in their original position, they cannot be reasonably accommodated in their Classified Service position. Should a Classified Service employee with a disability accept a reassignment to a vacant Career Service position as a form of reasonable accommodation, the employee will no longer be a Classified Service employee, but instead will be a new Career Service employee.
- B. Under this circumstance, the employee will be entitled to the pension given to Career Service employees after the appropriate number of years of service for vesting within the Career Service system. Although the employee is not entitled to retroactive vesting for this pension for their years of service as a Classified Service employee, they may purchase service credits subject to procedures established by the Denver Employees Retirement Plan.
- D. The employee's sick and vacation days that he or she accrued as a Classified Service employee will not be carried over to the new Career Service position; however, the employee will be given monetary payment for such leave upon separating from the Classified Service, in accordance with the Police or Fire

Department's rules and regulations and collective bargaining agreement then in effect. The employee shall accrue paid time off as a new Career Service employee.

12-66 ADA Leave

- A. ADA leave shall be provided:
 - 1. During the IAP, once the ADA Coordinator has determined that an employee has a disability, as defined in the ADA, which renders the employee unable to perform the essential functions of their existing job without reasonable accommodation.
 - 2. During any period of leave that is provided to the employee as a reasonable accommodation as a result of the IAP.
- B. ADA leave is unpaid leave. An employee may elect to use available paid leave, which will run concurrently with unpaid ADA leave, subject to the limitations in this Rule 12 on the use of paid leave while on salary continuation leave or Workers' Compensation leave.

Section 12-70 Pregnancy and Childbirth Leave and Other Accommodations (Revised June 24, 2019; Rule Revision Memo 54D)

12-71 Policy

- A. It is the policy of the City to provide equal employment opportunity to employees who are pregnant, have a pregnancy-related health condition, or are physically recovering from childbirth.
- B. No appointing authority, official, supervisor or employee shall discriminate against an applicant or employee who is pregnant or has a pregnancy-related health condition, or an applicant or employee physically recovering from childbirth in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, or any terms, conditions, or privileges of employment, in compliance with the Pregnancy Discrimination Act and the Colorado Pregnant Workers Fairness Act. In administering employees' requests for leave or other accommodations related to pregnancy or recovery from childbirth, such requests shall be treated in the same manner as requests from employees with temporary, work related medical restrictions.

12-72 Interactive Process (IAP) and Accommodations

- A. 1. An employee who is unable to perform the essential functions of the employee's position because of the employee's pregnancy, physical recovery from childbirth, or related condition, may request a reasonable accommodation even if the employee would not be eligible for an accommodation under the ADA, or for modified duty under Workers' Compensation.

2. Such an employee is not required to take leave as a reasonable accommodation if the employer can provide another reasonable accommodation for the employee such as an alteration to the non-essential functions of the employee's job, temporary transfer, or modified duty.
- B. A department or agency shall provide a reasonable accommodation to the known pregnancy, pregnancy-related condition, and physical recovery from childbirth of an otherwise qualified applicant or employee, unless it can be demonstrated the accommodation would impose an undue hardship on the operation of the department or agency. These determinations with regard to employees shall be made through the IAP which is set forth in Rule 12-43. The process for accommodating applicants can be found in Rule 3 RECRUITMENT.
 - C. As an accommodation, the appointing authority may temporarily transfer the employee to an available alternative position for which the employee is qualified and for which the modified schedule is less disruptive to the business and/or operational needs of the department or agency than the employee's regular schedule. The alternative position may be a modified or light duty position.
 1. Temporary transfer is not available to a position that constitutes a promotion. This does not preclude an employee from applying for promotions within the Career Service.
 2. Temporary transfer is not available to job applicants who are not currently City employees.
 - D. If an employee cannot be accommodated or reassigned, the employee may be entitled to unpaid leave as an accommodation. The employee may elect to substitute available paid leave for this unpaid leave.
 - E. The department or agency shall designate leave granted because of an employee's pregnancy, physical recovery from childbirth, or related condition as FMLA leave if the requirements of the applicable Career Service rules and Federal statutes and regulations are met.

Section 12-80 Retaliation and Coercion

- A. It is a violation of this rule to discriminate against any individual because that individual has opposed any act or practice prohibited by this rule or because that individual filed a grievance or appeal, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this rule.
- B. It is a violation of this rule to coerce, intimidate, threaten, harass or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected by this rule (including, but not limited to, making a request for a reasonable accommodation).

Section 12-90 Confidentiality and Record Keeping

Any medical information obtained about an employee pursuant to this Rule 12 shall be collected and maintained on separate forms and in separate files and be treated as confidential, except that:

- A. Supervisors, managers, human resources personnel and other City employees involved may obtain access to such information on a need to know basis.
- B. Supervisors, managers, human resources personnel and other appropriate City employees may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations.
- C. First-aid and safety personnel may be informed if the disability requires emergency treatment.
- D. Information may be given to the state workers' compensation offices, and state second injury funds, in accordance with the state workers' compensation laws.

Rule 13
Pay for Performance
(Revised December 19, 2024)

Purpose statement:

The purpose of this rule is to explain the performance review program and how the individual performance of eligible Career Service employees is evaluated, reported, and rewarded with merit increases and merit payments.

Section 13-10 Definitions:

A. Eligible Employee: All Career Service employees are eligible for merit increases and merit payments as provided in this Rule, except:

1. On-call employees.
2. Employees holding positions in the Training pay table, which only has one pay rate.
3. Employees who hold positions in classifications contained in the Undersheriff pay tables. and
4. Employees hired into the city after September 30th of the previous year.

B. Merit Increase: Periodic increase to an employee's base rate of pay as determined by an employee's performance rating and location in the applicable pay range.

C. Merit Payment: Lump sum payment is a percentage of an employee's current annual base salary. A merit payment will not increase an employee's base rate of pay.

D. Performance Improvement Plan ("PIP"): A document which may be used at any time during an employee's evaluation period to supplement the employee's individual goals 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.

Section 13-20 Goal Setting and Performance Reviews

13-21 Purpose

The purposes of goal setting and performance reviews are to outline job expectations, establish performance outcomes and measures, encourage, and support professional development, provide ongoing performance feedback, and evaluate performance in a timely manner.

13-22 Written Goal Setting

An eligible employee's supervisor shall work with the employee to identify the goals for the performance outcomes and measures against which the employee's performance is evaluated every year. This shall be done annually for current employees, as well as upon appointment to a new position, or the assignment of substantially different duties to an employee. These goals shall be provided to the employee in writing.

13-23 Performance Reviews

- A. All eligible employees shall have their performance for the previous calendar year formally evaluated and rated in a written performance review. This evaluation shall occur once every year according to the schedule attached as Appendix A.
1. Eligible employees who have been absent from their position for less than a calendar year shall have their performance evaluated based on the time they were present at work.
 2. Eligible employees who have been on a leave of absence from their position for all of the preceding calendar year shall not receive a performance evaluation. These employees shall have their pay adjusted to reflect the merit increase they would have received with a "Thriving" performance rating, based upon the approved merit increase percentage pool for the applicable merit cycle.
- B. Whenever an eligible employee changes supervisors, the employee's former supervisor should evaluate the employee's performance in relation to the employee's goals. Each goal should be rated individually, and no overall rating is required. If the change in supervisors is the result of the employee's former supervisor terminating employment with the City, the next level manager is responsible for evaluating the employee's performance. These ratings shall cover the period from the beginning of the year until the effective date of the change in supervisors.
1. The employee's current supervisor, as well as the employee, will receive the interim evaluation electronically.
 2. At the end of the evaluation year, the employee's current supervisor shall

prepare a performance review for the entire calendar year. This performance rating should consider the information provided by the previous supervisor, and the employee's current performance in proportion to the time spent in each assignment.

Section 13-30 Performance Review Process

13-31 Performance Ratings

- A. An eligible employee's performance shall be evaluated in an employee's review as one of the following:

Rating	Rating Name	Definition
3	Excellent	Significantly exceeds performance standards and goals on continuous basis. Frequently delivers outcomes that are superior. This rating reflects a level of performance that is truly superb throughout the rating period.
2	Thriving	Effectively achieves performance standards and on a consistent basis. Regularly delivers outcomes that are good or better than expected. This rating reflects a level of performance that are good or better than expected. This rating reflects a level of performance that is solid or in some respect even stronger than expected.
1	Development Needed	Falls short of performance standards and goals on a consistent basis. Delivers outcomes that are less than expected in terms of quality and/or consistency. This rating reflects a level of performance that needs improvement. It may also reflect that the employee has not spent enough time in the position to develop the knowledge or proficiencies needed to meet established standards.

13-32 Merit Increases and Merit Payments

- A. The funding for merit increases and merit payments is provided in the annual appropriation ordinance. The pay increase 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 the City Council and the Mayor. In case of a conflict between ordinance and these rules, the ordinance will prevail.

- B.
 - 1. Departments and agencies are responsible for determining the percentage increase associated with each employee rating. The percent increase for all eligible employees shall be the average for merit increases and merit payments delivered in the calendar year following the performance cycle.

 - 2. When there is a change to an employee's pay rate on the same effective date as the merit increase, the merit increase will be applied before any other pay rate change(s).

- C. Merit Table:
 - 1. Eligibility for merit increases and merit payments is based on an eligible employee's overall annual performance rating as measured by a performance review. Merit increase percentages and lump sum merit payment percentages as set forth below:

2024 Performance Rating	2025 Merit Increase Percent	2025 Lump Sum Merit Payment Percent
3. Excellent	3.20% - 5.20%	3.20% - 5.20%
2. Thriving	3.20% - 5.20%	3.20% - 5.20%
1. Development Needed	0.00% - 2.00%	0.00%

- 2. An eligible employee whose current pay rate is within the pay range of the pay grade assigned to the employee's job classification shall receive a merit increase in accordance with the above table.

- 3. An eligible employee whose current pay rate is at or above the pay range maximum of the pay grade assigned to the employee's job classification shall receive a lump sum merit payment in accordance with the above table.

- 4. No eligible employee shall receive a merit increase that exceeds the range maximum of the pay grade assigned to the employee's job classification. If the application of this sub-paragraph results in an employee receiving a merit increase that is less than the percentage

increase awarded to the employee, the employee shall receive the difference between the merit increase awarded and the merit increase received in the form of an additional merit payment.

- D. 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 performance reviews for eligible employees, but no merit increases, or merit payments will be awarded during this time.

13-33 Pro-ration for New Hires

Employees hired after January 1st and on or before September 30th will have their merit increase pro-rated to the employee's start date.

13-34 Effective Date of Merit Increase

- A. Merit increases and merit payments will be calculated from an employee's annual base salary as of December 31st of the previous year and will be effective on the first Sunday of the following calendar year.
- B. An employee's merit increase shall not be included as part of another pay change (such as a promotional increase) and must be applied as a separate merit increase.

13-35 Performance Review Schedule

Departments and agencies shall submit proposed merit increases and merit payments to the Office of Human Resources ("OHR") as provided in the schedule attached as Appendix A.

13-36 Review of Performance with Employee

Each employee's written performance review shall be reviewed with the employee as provided in the schedule attached as Appendix A.

13-37 Official Records

The annual performance review and any supporting documentation shall be made a permanent part of the employee's official personnel record.

13-38 Discipline

- A. The written performance review and/or PIP(s) may be used as a basis for disciplinary action under Rule 16 **CODE OF CONDUCT AND DISCIPLINE**, up to and including dismissal, if an employee's performance fails to comport with the standards set forth in any of these documents.

13-39 Grievances and Appeals Relating to Performance Reviews

- A. An eligible employee may grieve any performance rating pursuant to Rule 18 **DISPUTE RESOLUTION**.
- B. Grievances of performance ratings may not be appealed.
- C. An eligible employee may not grieve or appeal any other aspect of the performance review program.

Appendix 13.A

This Appendix is provided for informational purposes and is not considered a part of the Rules.

2024 Performance Review Schedule

Due Date	Task
December 6, 2024	Deadline to submit offers for internal appointments of current limited and unlimited CCD employees.
December 15, 2024	Last day for internal appointments of current limited and unlimited CCD employees to be effective.
December 13, 2024	Deadline for performance evaluations for the <u>2024</u> calendar year to be completed by supervisors, second level managers, and agency approvers.
January 17, 2025	Deadline for appointing authorities to submit merit increase and merit payment recommendations to OHR. All eligible employees must be accounted for in these recommendations. The percent increase for all eligible employees in a department or agency should average 4.00% for merit increases and merit payments delivered in 2025.
January 12, 2025	First day for 2025 internal appointments of current limited and unlimited CCD employees to be effective after Workday Freeze.
February 14, 2025	Merit increases and merit payments appear on employee paychecks, as well as retroactive merit increases and merit payments for the period from January 5th until February 8.

RULE 14
Separation Other Than Dismissal

Purpose Statement:

The purpose of this rule is to define the circumstances and processes by which an employee in the Career Service may be separated from employment other than by dismissal.

Section 14-10 Types of Separation Other Than Dismissal

- A. The separation of an employee from the Career Service other than by dismissal shall be designated one of the following:
1. Resignation;
 2. Retirement;
 3. Death;
 4. Disqualification;
 5. Separation of employees holding at-will, trainee or intern probationary, or employment probationary status;
 6. Layoff.
- B. Written notices required under this Rule 14 shall be served on the employee by one or more of the following:
1. In person with a certificate of hand delivery;
 2. By first class U.S. mail, with a certificate of mailing to the employee's last known address; or
 3. By e-mail, delivery receipt requested, to the employee's City email address or the employee's personal email address. This rule does not require that a delivery receipt be received in order to effect service. (Revised retroactively to August 15, 2025)
- C. The personnel action shall show the type of separation and the employee's last day as a City employee shall be the effective date of separation. (Revised August 19, 2021; Rule Revision 72D)
- D. Employees who separate from employment with the City shall receive payment for all compensatory time, paid time off, and vacation and sick leave, for which they are eligible according to the provisions of Rule 9 **Pay Administration** and Rule 10 **Paid Leave**.

- E. A separation of an employee under this Rule 14 is considered to be a separation without fault. An employee who has been separated under this Rule 14 may be considered for re-employment without examination as provided in Rule 3 **Recruitment and Selection**.

Section 14-15 Designees

Appointing authorities, including the Office of Human Resources (“OHR”) Executive 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 OHR.

Section 14-20 Resignation

- A. Resignation is the voluntary separation by an employee from the Career Service.
- B. Notice to supervisor: It is the responsibility of an employee who plans to resign in good standing from the Career Service to provide written notice to his or her immediate supervisor at least ten (10) calendar days in advance of the employee’s last day as a City employee. The appointing authority may waive this requirement for good and sufficient reasons.
- C. Job abandonment: An employee’s failure to report for his or her assigned shift and notify his or her immediate supervisor of the absence prior to the start of his or her shift for three (3) consecutive work days may be called “job abandonment” and treated like a resignation. The required signature of the employee on the resignation shall be waived. Instead, the appointing authority shall file a statement indicating how the conditions of this paragraph have been met.
- D. Appointing authorities are responsible for approving or disapproving employee requests to use paid or unpaid leave (unless otherwise provided in these rules) between the time notice of resignation is given and the employee’s last day as a City employee.

Section 14-21 Retirement

Any employee in the Career Service may designate his or her resignation as a retirement when he or she meets the eligibility requirements of the Denver Employees Retirement Plan.

Section 14-25 Death

In the case of a separation caused by the death of an employee, the employee’s last day as a City employee shall be the date of death.

Section 14-30 Disqualification

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 with or without accommodation.

14-31 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 12 **Leave and Accommodations for Pregnancy and Extended Illnesses or Injuries**), and the ADA Coordinator must have concluded the process and referred the employee's case back to the department or agency without making an accommodation 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.

14-32 Procedure

- A. The appointing authority shall follow procedures similar to contemplation of discipline 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 contemplation of disqualification letter. Substantial amendments or additions are permitted only by repeating the contemplation of 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 14-40 Separation of Employees Holding At-will, Trainee or Intern Probationary, or Employment Probationary Status

(Revised September 16, 2016; Rule Revision Memo 20D)

- A. An employee holding at-will, 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 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 **Code of Conduct and Discipline**.

Section 14-50 Layoff

14-51 Definition

A layoff is the elimination of a filled position as further defined in Career Service Rule 1.

14-52 Purpose

(Revised July 1, 2025; Rule Revision Memo 93D)

The purpose of this rule is to ensure that layoffs are implemented in a streamlined manner that is consistent with the merit-based career service personnel system, serves the best interests and operational needs of the involved department or agency and provides due process protections to the affected employees.

14-53 Length of Service

- A. General rule: For purposes of this rule, 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 unpaid leave, 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 A), military service shall be added to the length of service for lay-off purposes under the following conditions:
 - 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.

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 a leave of absence without pay for the purpose of serving on active military duty as defined in paragraph 14-53 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. (Revised November 25, 2019; Rule Revision Memo 57D)
 - d. To be eligible for military service credits, employees must have been separated from such service under honorable conditions.
 - 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.
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.
4. It is the responsibility of employees who may be eligible for military service credits, including employees whose spouses died serving in the military or due to service-connected causes, to ensure the OHR has the information and proof necessary to determine their eligibility and calculate any military service credits they may be entitled to in the event of layoffs.

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 lay-off, 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.

D. Election Commission transition: Election Commission employees who are appointed to Career Service Election Division 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 lay-off, employees who hold positions in the Election Division 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 Division 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.

(Revised November 25, 2019; Rule Revision Memo 57D)

14-54 General

(Revised July 1, 2025; Rule Revision Memo 93D)

A. Appointing authorities are responsible for determining the number of positions by classification and position type (if applicable) to be eliminated within each layoff unit and for determining which employees in those positions are to be laid off in conformance with this Rule, Section 14-50.

- B. Prior to implementing layoffs, appointing authorities must take the necessary steps to separate any probationary employees in the affected classification and to abolish all vacant positions in the affected classification. An appointing authority may, however, request from the OHR Executive Director approval to exempt a probationary employee from the operation of this rule based on sufficient justification for allowing the probationary employee to be evaluated and ranked along with other employees in the affected classification.
- C. Layoffs shall be determined by layoff units, which are defined in Career Service Rule 1 **Definitions**.
- D. Layoffs may also be determined by position types. Appointing authorities shall have the discretion to:
 - 1. eliminate all limited, part-time and/or on-call positions in an affected classification before other position types; or
 - 2. determine the number of limited, part-time and/or on-call positions in an affected classification to be eliminated and utilize the ranking process set forth in CSR 14-55.C to determine which employees in those positions are to be laid off; or
 - 3. evaluate all position types (unlimited, limited, full-time, part-time and/or on-call) in an affected classification together utilizing the ranking process set forth in CSR 14-55 C.
- E. In accordance with the Colorado Constitution, Article XII, § 15. Veteran's Preference, employees not entitled to military service credits shall be laid off before employees entitled to such credits who have the same or more length of service, including their military service credits.
- F. Except as otherwise provided in subparagraph E of this Rule 14-54, the order of layoffs shall be determined according to the ranking process set forth in Rule 1455 B and C.
- G. Employees designated to be laid off are not entitled to be demoted, transferred or reassigned to other occupied or unoccupied positions.
- H. Employees designated to be laid off whose effective layoff date is within ninety (90) calendar days from the date they attain eligibility for normal or early retirement under DRMC § 18-408(a) and (b) shall, upon request, be allowed to submit an irrevocable notice of retirement effective as of their retirement eligibility date, or such later date as the appointing authority may approve, in lieu of being laid off. Such employees may be required to use paid and/or unpaid leave between the date their layoff would have been effective and the date of their retirement.

14-55 Layoff Planning and Submission of Layoff Plan (Revised July 1, 2025; Rule Revision Memo 93D)

- A. The appointing authority shall determine the number and, if applicable, the types of positions by classification to be eliminated within each layoff unit. The appointing authority shall provide this information to the OHR Executive Director or their delegee and request a report for each involved layoff unit that lists the employees in each affected classification in order of their length of service (including military service credits), along with their position types.

- B. As to each affected classification and position type, if applicable, within a layoff unit, the appointing authority or delegee, in consultation with their human resources team and supervisors or managers of the affected layoff unit, shall evaluate and rank each employee according to how that employee's performance history (including performance ratings and disciplinary history), skills, and abilities (as they best align with ongoing operational needs of the department or agency), and length of service. Prior to conducting the evaluation and ranking of a classification and position type, the appointing authority or delegee shall assign a percentage weight to each of these four factors as defined below and within the ranges listed in the table below. The application of the percentage weights shall be consistent throughout the layoff unit. If the appointing authority intends to first eliminate all limited and/or part-time positions in the affected classifications, the incumbents in those positions shall not be ranked. All evaluations and rankings shall be performed without regard to the employees' protected characteristics, as listed and defined in CSR 16-22 A.

1. Definition of Evaluation and Ranking Factors:

- a. Performance History shall be a combination of a minimum of an employee's three most recent annual performance reviews along with a deduction for any discipline within the past three years. OHR must publish a statistically viable formula for calculating missing performance review(s) to be applied for all employees who have fewer than three performance reviews. Performance evaluation criteria must be applied consistently across all affected employees.

- b. Skills are tasks specific to a position and that require specialized knowledge, tools, or techniques relevant to the classification and the department's operational needs. Typically developed through on-the-job experience, training or education.

- c. Abilities include competencies which are foundational, often cognitive or interpersonal in nature, and encompass the capacity to perform job functions specific to a position, including but not limited to problem solving, decision making, communication, teamwork, adaptability, flexibility, initiative, accountability, leadership or influence.

- d. Length of Service, for purposes of evaluating and ranking an employee, shall be as defined in Rule 14-52. If there is a tie between employees in overall ranking at the end of the evaluation process

under Rule 14-55 B and prior to applying the military service credits, then length of service shall serve as the tiebreaker.

2. Ranges:

Factor	Range
Performance History	10 % to 35%
Skills	10 % to 35%
Abilities	10 % to 35%
Length of Service	25%

- C. Employees with the lowest rankings shall be laid off before employees with higher rankings, unless one or more employees in the affected classification are entitled to military service credits. In that instance, the employees entitled to military service credits shall have their order in the layoff list determined in accordance with Rule 14-54 E.
- D. The appointing authority, in conjunction with their human resources team, shall prepare a layoff plan for each layoff unit using an approved template, which shall first be submitted, along with the worksheets supporting the rankings, to the City Attorney's Office (CAO) for legal review, before being submitted to the OHR Executive Director or delegatee for final review and approval. Only after the CAO and OHR have reviewed and approved a layoff plan for conformance with this Rule 14-50 shall the appointing authority be authorized to issue Notice of Layoffs to the affected employees.

14-56 Notice of Layoff and Meeting with Employees
(Revised July 1, 2025; Rule Revision Memo 93D)

- A. The appointing authority shall give a final written notice of layoff to each affected employee a minimum of thirty (30) calendar days before the employee's last day as a City employee. A copy of each such notice shall be sent to the OHR. The period of time shall be computed in accordance with Rule 19 **Appeals**.
- B. Employees who receive a notice of layoff shall, upon request, be entitled to meet with their supervisor, manager and/or assigned human resources personnel within ten (10) calendar days following receipt of the notice of layoff to state any concerns regarding the layoff decision and/or provide any information they believe should be taken into consideration, including their eligibility for normal or early retirement and/or military service credits.

14-57 Appeal
(Revised July 1, 2025; Rule Revision Memo 93D)

An employee who is laid off may appeal the action in accordance with Rule 19 **Appeals**.

14-58 Reinstatement
(Revised July 1, 2025; Rule Revision Memo 93D)

- A. An employee who is laid off shall be placed on a reinstatement list for the classification from which they have been laid off or voluntarily resigned in lieu of layoff.
- B. Employees who fall into any of the following categories shall not be included on or shall be removed from a reinstatement list:
 - 1. An employee who had an overall rating of “Development Needed” (or the lowest rating category) in the most recent rating year prior to separation by reason of layoff;
 - 2. An employee who had been placed on a Performance Improvement Plan during their final performance evaluation cycle and had not successfully completed that plan at the time of separation;
 - 3. An employee who was on a Performance Improvement Plan when laid off and it was documented they were not successfully progressing through the plan at the time of separation;
 - 4. A former employee who fails to respond to a referral within 2 business days of being contacted by the Office of Human Resources or the hiring manager; or
 - 5. A former employee who turns down a referral by the Office of Human Resources.
- C. Eligible former employees will be listed for one (1) year from the effective date of the final layoff within the employee’s department or agency in a fiscal year, unless removed for cause.
- D. Eligible former employees shall be listed by ranking so that the former employee with the highest ranking is higher on the list. If an employee with military service credit has been laid off, that former employee shall be ranked in accordance with Rule 14-54 E.
- E. Reinstatement lists shall only be used within the layoff unit that the former employee was in when the layoff took place.
- F. Referral from the reinstatement list is mandatory and exclusive. No other referral shall be made while any eligible former employees remain on this list. Referral shall consist of the highest ranking eligible former employee, or if there are ties, all those at the highest ranking.
- G. If a reinstatement list exists for a classification in which the department or agency has a job with a special qualification which has been approved by the OHR Executive Director, referral shall consist of the highest ranking eligible former employee who has the special qualification, or if there are ties, all those with the required special qualification at the highest ranking. If none of the eligible former employees have the required special qualification, a referral shall be made in accordance with the rules applicable when there is no reinstatement list.
- H. Any reinstatement list may be abolished at any time by the OHR Executive

Director if the classification specification is abolished or revised.

- I. Restoration of the balance of sick leave hours upon reinstatement shall be in accordance with Rule 10 **Paid Leave**.

Section 14-59 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 OHR Executive 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 authorized the personnel action separating the employee, or his or her successor shall be authorized to request a change in the type of separation. A copy of the OHR Executive Director's written approval shall be attached to the personnel action which shall show the type of change and the reason for the change.

APPENDIX 14.A.

Constitution of Colorado

Article XII, Section 15, Veterans' Preference

(1)(a)(I) The minimum requirements for a candidate to be placed on an eligible list for a position shall be the same for each candidate for appointment or employment in the state personnel system 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.

(II) If a numerical method is used for the comparative analysis based on objective criteria, applicants entitled to preference under this section shall be given preference in accordance with paragraphs (b) to (e) of this subsection (1). If a nonnumerical method is used, applicants entitled to preference under this section shall be added to the interview eligible list.

(b) Five points shall be added to the comparative analysis score of each candidate 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 comparative analysis score of any candidate 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 comparative analysis score of any candidate 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 comparative analysis score of any such candidate pursuant to this subsection (1).

(2) The certificate of the department of defense or of the veterans 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 preference 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 preference is given 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 preference 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.

(4) The state personnel board and each comparable supervisory or administrative board of any such civil service or merit system of any agency of the state or any such political subdivision thereof shall implement the provisions of this section to assure that all persons entitled to preference in a comparative analysis and retention shall enjoy their full privileges and rights granted by this section.

(5) No person shall receive preference pursuant to this section with respect to a promotional opportunity. Any promotional opportunity that is also open to persons other than employees for whom such appointment would be a promotion, shall be considered a promotional opportunity for the purposes of this section.

(6) Repealed

(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 opportunities, except as set forth in subsection (5) of this section, conducted on or after such date, and it shall be in all respects self-executing.

Appendix 14.B.

This Appendix is provided for informational purposes and is not considered a part of the Rules

This Appendix is intended to comply with the publication requirement in Rule 14-55 B.1.a, which states:

- a. Performance History shall be a combination of a minimum of an employee’s three most recent annual performance reviews along with a deduction for any discipline within the past three years. **OHR must publish a statistically viable formula for calculating missing performance review(s) to be applied for all employees who have fewer than three performance reviews.** Performance evaluation criteria must be applied consistently across all affected employees. [emphasis added].

Listed below are four separate scenarios for calculating performance reviews when ranking employees in an affected classification as part of the layoff process. Scenarios 2 through 4 set forth the formula to be used when calculating fewer than three performance review(s).

- 1. All of an employee’s available performance raw scores from their three most recent annual performance reviews history will be used to compute an average performance score.

Reviews	2022	2023	2024	2022-2024 Average
Employee has all three performance reviews	2.55	2.79	2.40	2.58

- 2. Employees who received at least one, but fewer than three, annual performance reviews in the previous three years will have their average calculated based on the raw performance score(s) they received.

Reviews	2022	2023	2024	2022-2024 Average
Employee only has two performance reviews	-	2.79	2.40	2.60
Employee only has one performance review	-	-	2.40	2.40

- 3. Employees who had a break in service during the previous three years will have their average calculated based on the raw performance scores that are available.

Reviews	2022	2023	2024	2022-2024 Average
Employee only has two performance reviews from 2022 & 2023	2.55	2.79	-	2.67
Employee only has one performance review from 2023	-	2.79	-	2.79

- 4. Employees who have not received an annual performance review within the previous three years will be allotted a raw performance score based upon the average raw score of career service employees who received a Thriving rating during the performance year immediately preceding the year in which the layoff is occurring. That score will serve as their overall average.

Reviews	2022	2023	2024	2022-2024 Average
Employee has no performance reviews.	-	-	-	2.20 (based on average 2024 thriving performance score)

**RULE 16
CODE OF CONDUCT
AND DISCIPLINE**

(Revised February 12, 2016; Rule Revision Memo 18D)

Purpose statement:

The purpose of this rule is to provide Career Service employees clear expectations for their conduct in an effort to maintain the public trust; to promote both public and workplace safety; to promote equal employment opportunity without regard to race, color, religion, national origin, sex, sexual orientation, gender identity and expression, disability, genetic information, military status, age, marital status, political affiliation, or any other status protected under federal, state and/or local law; and to establish a progressive discipline process that is governed by the principles of due process, personal accountability, reasonableness and sound business practice. This rule contains information on the following topics:

- A. Delegation of authority
- B. Compliance with Code of Ethics and Executive Orders
- C. Harassment and discrimination
- D. Employee responsibility to report charges, convictions, and nolo contendere pleas
- E. Use of City facilities
- F. Political activities
- G. Employee organization and representation
- H. Recording devices in the workplace
- I. Grounds for discipline
- J. Investigatory leave
- K. Disciplinary process

(Revised September 21, 2017; Rule Revision Memo 28D)

Section 16-10 Service of Written Notice and Computation of Time

(Emergency Rule Revision Effective March 26, 2020, expires September 22, 2020; Effective September 17, 2020; Rule Revision Memo 58D)

- A. Written notices required to be served on an employee under this Rule 16 shall be served on the employee by one or more of the following:
 - 1. In person with a certificate of hand delivery;
 - 2. By first class U.S. mail, with a certificate of mailing to the employee's last known address; or
 - 3. By email, delivery receipt requested, to the employee's City email address or the employee's personal email address. This rule does not require that a delivery receipt be received in order to effect service.

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- B. The computation of any time period stated in days in these rules shall be as follows:
1. The time period begins on the day after the event that triggers the time period.
 2. The time period shall include all calendar days including weekends and holidays.
 3. The time period ends at the close of business on the final day of the time period.
 4. If the final day of the time period falls on a weekend day, a holiday, or other day when the department or agency in question is not open for business, the time period shall end on the next working day.

Section 16-15 Delegation of Authority

Appointing authorities may delegate in writing any authority given to them under this Rule 16 to a designee within his or her department or agency.

Section 16-20 Code of Conduct

16-21 Compliance with Code of Ethics and Executive Orders

- A. All employees shall comply with the City Charter, the Denver Revised Municipal Code, and other applicable legal authority, including but not limited to:
1. The Denver Code of Ethics, which regulates:
 - a. Employment and supervision of family members;
 - b. Gifts to City employees;
 - c. Conflicts of interest while employed;
 - d. Outside employment or business activity; and
 - e. Use of public office for private gain.
 2. Any provisions in the Denver Charter regarding ethical conduct of employees;
 3. Any stricter or additional Code of Ethics promulgated by an employee's department or agency as authorized by the Denver Code of Ethics; and

4. Any Executive Orders governing employee conduct including, but not limited to:
 - a. Executive Order No. 16 – Use of Electronic and Communication Devices and Services
Sets terms of employee use of computers, cell phones, Internet and e-mail
 - b. Executive Order No. 55 – Department Information Centers
Regulates employee use of bulletin boards.
 - c. Executive Order No. 94 – City and County of Denver Alcohol and Drug Policy
Covers testing, training and discipline regarding employee drug and alcohol use.
 - d. Executive Order No. 112 – Violence in the Workplace
Defines improper behavior, establishes management responsibility, and discipline.

16-22 Harassment, Discrimination, and Retaliation
(Revised June 22, 2018; Rule Revision Memo 43D)

A. Protected Characteristics

Career Service employees have a right to work in an environment free of discrimination and harassment based on their race, color, religion, creed, national origin/ancestry, sex, sexual orientation, transgender status, gender identity and expression, disability, genetic information, military status, age, marital status, political affiliation, pregnancy or related condition, or any other status protected under federal, state, and/or local law. These characteristics are referred to as "Protected Characteristics". The following definitions are intended to provide assistance in interpreting the above terminology:

- Creed: a system or doctrine of religious beliefs, or a formal system or codification of beliefs about how people should live or behave.
- National origin/ancestry: the country where an employee was born, the place of origin of the employee's ancestors, the employee's ethnicity, or the physical, cultural, ethnic, or linguistic characteristics of a particular national origin or ethnic group.
- Sexual orientation: an employee's orientation toward heterosexuality, homosexuality, or bisexuality, or an employer's perception thereof.
- Gender identity: an employee's innate sense of the employee's own gender.

B. Discrimination

Discrimination occurs when an employee experiences an adverse employment action based on one or more of an employee's Protected Characteristics. Adverse employment actions include, but are not limited to, termination, suspension, involuntary demotion, and failure to promote. Adverse employment actions that are taken for any reason other than an employee's Protected Characteristic(s) are not discrimination.

Behavior may violate this Rule 16-22 B even if it would not constitute a violation of federal, state, or local law.

C. Harassment

Harassment based on one or more of an employee's Protected Characteristics is a form of prohibited discrimination. There are two types of harassment:

1. Hostile Work Environment: This type of harassment exists when an employee is subjected to unwelcome and offensive conduct by someone the employee interacts with on the job when such conduct is based on a Protected Characteristic and is sufficiently severe or pervasive as to create an intimidating, hostile, or offensive work atmosphere. In order to constitute a hostile work environment, the conduct must be:

- based on one or more Protected Characteristics; and
- subjectively offensive to the employee; and
- objectively offensive to a reasonable person; and
- severe or pervasive.

However, harassing conduct does not have to rise to the level of a hostile work environment to warrant discipline under these rules. Harassing conduct may be verbal, visual, or physical in nature, and may include derogatory comments, mocking, imitating, slurs, jokes, photographs, posters, cartoon drawings, social media content, gestures, unwanted touching, and blocking normal movement, among other forms of conduct.

2. Quid Pro Quo ("This for that"): This type of harassment exists when a supervisor takes or threatens to take an adverse employment action or withholds or threatens to withhold an employment benefit based upon a subordinate employee engaging or refusing to engage in certain behaviors (typically sexual favors). The behavior must be based on, or related to, a Protected Characteristic.

Behavior may violate this Rule 16-22 C even if it would not constitute a violation of federal, state, or local law.

D. Retaliation

Retaliation against employees for reporting or threatening to report harassment or discrimination or assisting the City in the investigation of any complaint is strictly prohibited. Retaliation can include, but is not limited to, unwarranted discipline or unfavorable performance ratings, hostility from co-workers, and escalating harassment. Any employee engaging in retaliation may be subject to discipline, up to and including dismissal.

Behavior may violate this Rule 16-22 D even if it would not constitute a violation of federal, state, or local law.

E. Reporting Alleged Discrimination, Harassment, or Retaliation

1. **Experiencing Discrimination, Harassment, or Retaliation**

a. If an employee is subjected to discriminatory, harassing, or retaliatory behavior from a co-worker, another City employee not in the employee's chain of command, or an individual the employee encounters while performing their duties who is not employed by the City, the employee is strongly encouraged to:

i. Make it clear to that person the behavior is offensive or makes the employee uncomfortable and ask that individual to stop; if the inappropriate behavior happens again, the employee must report the behavior to a supervisor and/or a human resources representative, or both; or

ii. Report the behavior to a supervisor, a human resource representative, or through any mechanism set up by the City for reporting such complaints, or all the above; or

If the individual alleged to have committed the discriminatory, harassing, or retaliatory behavior is a City employee:

iii. Request mediation by contacting OHR (see CSR §18-20); or

iv. File a grievance by completing the OHR grievance form and delivering the grievance form to the appointing authority or an HR representative of the employee's department or agency (see CSR § 18-30), unless the adverse employment action is subject to direct appeal (see CSR § 19-20 or § 20-20 (Deputy Sheriffs)).

b. If an employee is subjected to discriminatory, harassing, or retaliatory behavior from a supervisor in the employee's chain of command, the employee is encouraged to:

- i. If the employee feels comfortable doing so, address the behavior with that supervisor directly, explain that the behavior is offensive or makes the employee uncomfortable, and ask the supervisor to stop; or
 - ii. If the employee doesn't feel comfortable speaking to the supervisor directly about the behavior, or has done so already and either the behavior hasn't stopped or the employee is being subjected to retaliation, promptly contact a human resource representative or another supervisor to report the behavior; or
 - iii. Request mediation by contacting OHR (see CSR §18-20); or
 - iv. File a grievance by completing the OHR grievance form and delivering the grievance form to the appointing authority or an HR representative of the employee's department or agency (see CSR § 18-30), unless the adverse employment action is subject to direct appeal (see CSR § 19-20 or § 20-20 (Deputy Sheriffs)).
- c. Department of Safety employees may also report discriminatory, harassing, or retaliatory behavior to Safety HR or their department's Internal Affairs division.
 - d. Employees who experience an adverse employment action based on or resulting from discrimination, harassment, or retaliation by a supervisor that is subject to direct appeal may only file a direct appeal to the Hearings Office by following the procedures set forth in Rules 19 or 20 (Deputy Sheriffs). Actions that are subject to direct appeal cannot be grieved.

2. Witnessing Discrimination, Harassment, or Retaliation

If an employee witnesses discrimination, harassment, or retaliation in violation of this rule by or against any City employee, the employee must report such behavior to a supervisor, human resource representative, or both. Department of Safety employees may also report such behavior to Safety HR or their department's Internal Affairs division.

3. Receiving a Complaint of Discrimination, Harassment, or Retaliation as a Supervisor

- a. A supervisor who receives a report of discrimination, harassment, or retaliation must notify a human resource representative immediately or as soon as practicable.
- b. Supervisors are also strongly encouraged (and may be required by their department's policy) to notify their department's appointing authority or a supervisor in their chain of command

about the report, particularly if the allegation involves discrimination, harassment or retaliation by a supervisor against a subordinate employee.

- c. Supervisors should not investigate the allegations unless directed to do so by human resources, or as required by their department's policy.
- d. Supervisors should keep allegations as confidential as possible and only share information about the reported allegations on a need-to-know basis, such as with their department's appointing authority, a supervisor in their chain of command, or a human resource representative. Supervisors in the Department of Safety that receive complaints of discrimination, harassment, or retaliation may share that information with their department's Internal Affairs division.

F. Actions Taken in Response to Allegations of Discrimination, Harassment or Retaliation

All allegations of discrimination, harassment, and retaliation will be promptly investigated in accordance with Rule 18-40. Pending the outcome of the investigation, appropriate precautionary steps may be taken to separate and/or restrict contact between the alleged perpetrator and alleged victim, which may include placing the alleged perpetrator on paid investigatory leave. Absent extenuating circumstances and approval of the City Attorney's Office, the alleged victim shall not be negatively impacted by those precautionary steps. After the investigation is concluded, appropriate remedial action will be taken, which may include discipline or dismissal of the employee who engaged in the discrimination, harassment or retaliation.

16-23 Employee Responsibility to Report Charges, Convictions, and Nolo Contendere Pleas

(Re-numbered June 22, 2018; Rule Revision Memo 43D)

The employee or the employee's representative shall report criminal charges and convictions, and nolo contendere pleas (no contest pleas) to the employee's appointing authority as soon as possible as required by this section, but no later than three (3) calendar days after the occurrence.

A. Offenses that must be reported:

- 1. All employees who are charged with, have entered a plea of guilty or nolo contendere on, or are convicted of any felony, misdemeanor, or any other offense which involves violence against persons, destruction of property, dishonesty, theft, or the sale or possession of illegal drugs, must report such charges, pleas, or convictions to their appointing authority.

2. In addition to the requirement set forth in subsection 1, any employee who operates a motor vehicle as part of his or her job assignment must report any citation for traffic violations, whether received on or off the job (this does not apply to parking violations).
3. Additional reporting requirements may be established by a department or agency consistent with business necessity. Such additional requirements must first be approved by the Office of Human Resources ("OHR") and approved for legality by the City Attorney's Office.

B. A conviction is the adjudication of a criminal charge through:

1. A guilty plea;
2. The acceptance of a plea bargain;
3. A finding of guilty by a judge or jury;
4. The acceptance of a deferred sentence or deferred judgment; or
5. A plea where a defendant enters a guilty plea without actually admitting guilt (Alford plea).

C. Contemplating or Imposing Discipline on an Employee Convicted of or Charged with a Crime

After notification that an employee has been charged with or convicted of a crime, the appointing authority shall follow the guidelines described below:

1. If an employee has been charged with a crime, before imposing discipline, the department or agency must determine whether there is a preponderance of evidence demonstrating that the employee engaged in the conduct which forms the factual basis for the crime with which the employee is charged. The department or agency must also consider: the nature and type of the conduct which supports the charge; the nature of the position the employee holds in the City and the relationship of the position to the facts underlying the charge; and the impact of the facts on the employee's ability to perform the position.
2. If an employee has been convicted of a crime, before imposing discipline, the department or agency must consider: the nature and type of crime for which the person has been convicted; the facts underlying the crime; the nature of the position the employee holds in the City and the relationship of the position to the crime; the impact of the facts on the employee's ability to perform the position; and any evidence of rehabilitation.

D. Record-keeping:

Records of criminal charges or convictions resulting from an employee's reporting shall not be included in the employee's personnel file unless and until disciplinary action has been taken pursuant to this Rule 16.

16-24 Use of City Facilities

(Re-numbered June 22, 2018; Rule Revision Memo 43D)

Employees may not solicit or distribute any non-job-related material of any kind during working time on City property except for designated City programs.

16-25 Political Activities

(Re-numbered June 22, 2018; Rule Revision Memo 43D)

- A. Employees are prohibited from engaging in political activities during working hours. Employees also are prohibited from using City facilities and/or resources in connection with campaigns or other political activities.
- B. City facilities and/or resources may not be used to solicit:
 - 1. Monetary political contributions; or
 - 2. Any other contribution of services or resources for political purposes from any officer or employee.
- C. Employees shall not engage in the following activities at any time:
 - 1. Taking any action or making any promise or threat of action to any employee because of the employee's giving or the withholding of a political contribution or service; or
 - 2. Engaging in solicitation or politically motivated behavior that is harassing or discriminatory.

16-26 Employee Organizations and Representation

(Revised February 24, 2023; Rule Revision Memo 85D)

- A. Career Service employees shall have the right to join or refrain from joining any organization of employees. No employee or applicant may be discriminated against, harassed or retaliated against because such person belongs, or does not belong, to a union or other employee organization.
- B. Employees shall not:
 - 1. Coerce or attempt to coerce any other employee to join or refrain from joining a union or other employee organization; or
 - 2. Accept or offer gratuities, prizes, or other valuable items for influencing any employee to join or refrain from joining, or to vote for or against, a union or employee organization.
- C. Employees in supervisory or management positions shall not make any effort to obtain members or votes for a union or any employee association.

- D. The representative of an employee, including officers and business agents of unions or other associations to which an employee belongs, shall be given the same rights to speak on behalf of the employee as would be given the employee at the following meetings:
1. Contemplation of discipline meetings required under this Rule 16; and
 2. Contemplation of disqualification meetings required under Rule 14
SEPARATION OTHER THAN DISMISSAL.

This right to representation does not extend to meetings related to the normal business activities of the department or agency, such as staff meetings.

- E. The complainant and the accused may each have a representative present while being interviewed during an investigation conducted pursuant to Rule 18 **DISPUTE RESOLUTION**. However, the representative may not answer interview questions on behalf of the interviewee unless requested to do so by the interviewer.

F. Counseling Employees During Working Hours

A representative of an employee organization may visit an employee during working hours if the representative obtains the permission of the employee's immediate supervisor and such visitation does not interfere with the work of the agency.

G. Designation of Representative

1. Employees shall identify, in writing, to the person who signed the contemplation of discipline letter and the agency human resources representative, agents to represent them in a contemplation of discipline meeting, a contemplation of disqualification meeting, or in presenting a grievance or appeal.
2. No employee may be compelled to act as the representative of another employee.
3. If the representative is also a City employee, he or she shall be allowed, with the prior approval of his or her supervisor, to take up to a maximum of four (4) hours of approved administrative leave per pay period and use any accrued paid time off, vacation leave or compensatory time, or to take leave without pay to represent employees. Any such leave shall not adversely impact the agency or department and must be approved in advance.

16-27 Recording Devices in the Workplace
(Re-numbered June 22, 2018; Rule Revision Memo 43D)

Employees shall not record audio or video during work hours, when on City premises, when speaking to a City employee by phone, or when on City business without the prior permission of the employee's appointing authority.

16-28 Grounds for Discipline
(Revised February 24, 2023; Rule Revision Memo 85D)

The following may be cause for the discipline or dismissal of a Career Service employee:

- A. Neglect of duty or carelessness in performance of duties and responsibilities.
- B. Theft, destruction, or neglect in the use of City property; or property or materials of any other person or entity.
- C. Unauthorized operation or use of any vehicles, machines, or equipment of the City, or of any entity having a contract with the City, including, but not limited to, the unauthorized use of the internet, e-mail, or telephones.
- D. Any act of dishonesty, which may include, but is not limited to, lying, or improperly altering or falsifying records, examination answers, or work hours.
- E. Accepting, soliciting, or making a bribe, or using official position or authority for personal profit or advantage, including kickbacks.
- F. Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.
- G. Failing to meet established standards of performance including either qualitative or quantitative standards. When citing this subsection, a department or agency must describe the specific standard(s) the employee has failed to meet, such as standards in the employee's individual goals or in a Performance Improvement Plan (PIP). (Revised February 24, 2023; Rule Revision Memo 85D)
- H. Intimidation or retaliation against an individual who has been identified as a witness, party, or representative of any party to any hearing or investigation relating to any disciplinary procedure, or any violation of a city, state, or federal rule, regulation or law, or against an employee who has used the dispute resolution process in good faith.

- I. Failure to maintain satisfactory working relationships with co-workers and other individuals the employee interacts with as part of his or her job.
- J. Being charged with or convicted of a crime, or entering a plea of guilty or nolo contendere to a crime. Before imposing discipline under this subsection, the department or agency shall follow the guidelines contained in subsection 16-23.
- K. Failure to report charges of, pleas to, or convictions of crimes as required by this Rule 16.
- L. Discrimination or harassment as defined in this Rule 16. This includes making derogatory statements based on race, color, religion, national origin, sex, sexual orientation, gender identity and expression, disability, genetic information, military status, age, marital status, political affiliation, or any other status protected under federal, state, and/or local law. This prohibited conduct need not rise to the level of a violation of any relevant local, state or federal law before an employee may be disciplined and the imposition of such discipline does not constitute an admission that the City violated any law. (Revised September 21, 2017; Rule Revision Memo 28D)
- M. Unauthorized absence from work; or abuse of paid time off, sick leave, or other types of leave; or violation of any rules relating to any forms of leave.
- N. Unauthorized deviation from scheduled shift including reporting to work after the scheduled start time of the shift, leaving work before the end time of the shift, or working unauthorized overtime.
- O. Failure to use safety devices or failure to observe safety regulations.
- P. Engaging in a strike, sabotage, or work slowdown.
- Q. Divulging confidential or otherwise sensitive information to unauthorized individuals.
- R. Conduct which violates the Career Service Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, written departmental or agency regulations, policies or rules, or any other applicable legal authority. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.
- S. Refusal to cooperate, including refusing to provide requested information and materials relevant to the investigation.
- T. Conduct which is or could foreseeably:
 - 1. Be prejudicial to the good order and effectiveness of the department or agency;
 - 2. Bring disrepute on or compromises the integrity of the City; or
 - 3. Be unbecoming of a City employee.

Section 16-30 Investigatory Leave with Pay

- A. An appointing authority may place an employee on investigatory leave with pay for up to forty-five (45) days pending an investigation of a possible rule violation or failure to meet standards of performance when it is determined by the appointing authority that it is in the best interest of the City. It may include the period of time required to complete the investigation, to conduct a contemplation of discipline meeting, and to render a decision regarding discipline.

- B. If the investigation has not been completed within the forty-five (45) calendar day time period, the appointing authority may request from the OHR Executive Director an extension of time appropriate to complete the investigation and render a decision. The OHR Executive Director may approve a request for an extension for good cause shown. Additional extensions may be granted at the discretion of the OHR Executive Director. The appointing authority shall notify the employee of any extension that is granted by the OHR Executive Director.

- C. The appointing authority may require the employee to remain at home and/or be available by telephone; to participate in the investigatory process and/or to perform work during their normal work hours; or to return to work prior to the end of the period of investigatory leave. Normal work hours may be changed when an employee on investigatory leave needs to be available at a time the employee is not normally scheduled to work. If an employee is unable to meet these requirements, or chooses to attend to personal business during his or her normal hours of work, the appointing authority's regular procedures regarding the use of leave shall apply.

Section 16-40 Disciplinary Process

16-41 Purpose of discipline

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record. The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

16-42 Progressive Discipline

- A.
 - 1. Whenever practicable, discipline shall be progressive. However, any measure of discipline may be used in any given situation as appropriate.
 - 2. Failure to correct behavior or committing additional violations after progressive discipline has been taken may subject the employee to further discipline, up to and including dismissal from employment.
 - 3. An employee may be dismissed without prior discipline if the facts of that employee's case warrant dismissal.

- B. In order of increasing severity, the disciplinary actions which an appointing authority may take against an employee for violation of the Career Service Rules, the City Charter, or the Denver Revised Municipal Code, Executive orders, or any other applicable legal authority include:
 - 1. Written reprimand.
 - 2. Suspension without pay, or involuntary temporary reduction of pay.
 - 3. Involuntary demotion pursuant to Rule 9 **PAY ADMINISTRATION**.
 - 4. Dismissal.
- C. Nothing in this rule should be interpreted to preclude an appointing authority from counseling and coaching employees about performance and discipline issues. Appointing authorities are encouraged to document the date and subject of the conversation in the supervisor's file.

16-43 Form for Written Reprimand

- A. Written reprimands shall contain the following:
 - 1. The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules, with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance; and
 - 2. A notice that the employee may file a grievance on the written reprimand and may also seek mediation in accordance with Rule 18 **DISPUTE RESOLUTION**.
- B. A written reprimand shall be sent to the OHR for inclusion in the employee's personnel file.

16-44 Guidelines for Involuntary Temporary Reduction of Pay
(Revised October 19, 2018; Rule Revision Memo 47D)

When an involuntary temporary reduction in pay is imposed on an employee, the employee's pay shall not be reduced

- A. More than fifteen percent (15%); or
- B. If the employee is in a classification with a range minimum, below the range minimum of the employee's pay range; or
- C. For less than one (1) pay period; or
- D. For more than thirteen (13) pay periods; or
- E. Below the minimum wage.

Any merit increase or merit payment shall be based on the employee's normal rate of pay, not the employee's temporarily reduced rate of pay.

16-45 Procedure for Dismissal

- A. The appointing authority shall give an employee written notice of dismissal on or before the employee's last day as a City employee.
- B. Dismissed employees are not eligible for future employment in the Career Service for a minimum of five years following such dismissal. The OHR Executive Director shall establish procedures governing how dismissed employees may be placed on eligible lists after the five years have elapsed.
- C. Current address: It is the responsibility of each Career Service employee to ensure that official personnel records of the City reflect the employee's current mailing address, current residence address and telephone number at all times.
- D.
 - 1. An employee holding on call, paid trainee, paid intern, or employment probationary status may be dismissed at any time. Such action may only be appealed when the employee has alleged a violation of the "Whistleblower Protection" ordinance, in accordance with Rule 19 **APPEALS**.
 - 2. The notice of dismissal for an on call, paid trainee, paid intern, or employment probationary status employee shall identify the violations or failures to meet performance standards with sufficient detail so as to enable the employee to understand the basis for the dismissal. The notice of dismissal shall also contain a statement that the employee may appeal the dismissal only on the ground of an alleged violation of the "Whistleblower Protection" ordinance.
 - 3. The appointing authority is not required to hold a contemplation of discipline meeting before dismissing an employee holding on call, paid trainee, paid intern, or employment probationary status.

16-46 Contemplation of Discipline

- A. Before an employee with career status is suspended, given an involuntary temporary reduction in pay, involuntarily demoted, or dismissed, the appointing authority shall hold a contemplation of discipline meeting. A contemplation of discipline meeting is not required for written reprimands.
- B. The purposes of the contemplation of discipline meeting are to allow an employee to:
 - 1. Correct any errors in the department or agency's information or facts upon which it contemplates taking disciplinary action; and

2. Tell his or her side of the story and present any mitigating information as to why the disciplinary action should not be taken
- C. Since a contemplation of discipline meeting is not an administrative hearing, witness testimony is not allowed.
- D. Employees must be served with written notice seven (7) calendar days before the contemplation of discipline meeting. The seven (7) calendar day notice period starts on the day after the date shown on the certificate of hand delivery or mailing, or on the e-mail.
- E. The written notice of the contemplation of discipline meeting shall contain the following information:
1. That disciplinary action is contemplated;
 2. The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance;
 3. The purpose of the contemplation of discipline meeting as described in this Rule 16;
 4. The date, time, and location of the contemplation of discipline meeting; and
 5. That the employee is entitled to have a representative of his or her own choosing present at the meeting.
- F. The department or agency may approve or deny requests to re-schedule contemplation of discipline meetings.

16-47 Notices of Discipline

- A. In addition to the information that must be part of written reprimands, written notices of suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal shall also:
1. Contain a reference to the opportunity afforded the employee to tell his or her side of the story in accordance with this Rule 16 and that the information presented at the contemplation of discipline meeting was considered by the department or agency in reaching a determination.
 2. Contain a notice that the employee may appeal the suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal pursuant to Rule 19 **APPEALS**.

- B. The specific conduct or omissions listed on the written notice of discipline shall be the same as those listed in the contemplation of discipline letter, except for any charges or violations which were subsequently dropped.
- C. A notice of suspension, involuntary temporary reduction of pay, involuntary demotion, and dismissal shall be sent to the OHR for inclusion in the employee's personnel file, along with a completed personnel action form.
- D. Failure of a supervisor or appointing authority to comply strictly with the provisions of this section shall not constitute a basis for reversing a disciplinary action on appeal unless the employee shows that his or her rights were substantially violated by the lack of compliance.

16-48 Disciplinary Action Following Contemplation of Discipline Meeting

- A. Personnel decisions relating to progressive discipline may take into account prior disciplinary action, including documented coaching and counseling.
- B. A written notice of the disciplinary decision and the reasons for the disciplinary action based on the contemplation of discipline meeting and other pertinent information obtained by the appointing authority shall be served on the employee within twenty-one (21) calendar days after the meeting. The notice shall be considered served on the date shown on the certificate of hand delivery or mailing, or on the e-mail.
- C. If an appointing authority presents to the OHR Executive Director documented extenuating circumstances requiring additional time, the OHR Executive Director may extend the date for taking disciplinary action for an additional seven (7) calendar days. A request for an extension of time must be sent to the OHR Executive Director before the expiration of the time for taking disciplinary action. If disciplinary action is not taken within the initial time period and a request for extension of time is not timely submitted to the OHR Executive Director, the agency must repeat the steps contained in section 16-40 before disciplinary action may be taken.
- D.
 - 1. An employee may file a grievance of a written reprimand in accordance with Rule 18 **DISPUTE RESOLUTION**. An employee may not appeal a written reprimand to the Career Service Hearings Office.
 - 2. An employee may directly appeal a suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal in accordance with Rule 19 **APPEALS**.

RULE 18
DISPUTE RESOLUTION

(Revised February 12, 2016; Rule Revision Memo 18D)

Purpose Statement:

The purpose of this rule is to provide a process to resolve workplace issues at the lowest possible level (the level at which they occur). The City expects employees and supervisors to use the dispute resolution process in good faith. Retaliation against those who participate in the dispute resolution process in good faith is prohibited.

Section 18-10 Open Door Policy

- A. Under the City's open door policy, employees are encouraged to informally and directly discuss work-related issues with their direct supervisors.
- B. If this does not resolve the concern, the employee is encouraged to bring the issue to the attention of the employee's manager/director, appointing authority, or a human resource (HR) representative.
- C. The utilization of the open door policy does not suspend the timelines for filing a grievance.
- D. The City will not tolerate retaliation against employees who utilize the open door policy in good faith.

Section 18-20 Mediation

Mediation is a formal, voluntary process in which a neutral, trained mediator assists parties to a workplace dispute to reach a mutually acceptable agreement.

- A. Requesting Mediation:
 - 1. An employee, HR representative, supervisor or manager may request formal mediation by contacting the Career Service Mediation Program ("Mediation Program"). The Mediation Program will submit the request to a Mediation Provider, who will notify the other parties.
 - 2. Parties are encouraged, but not required to participate in mediation. If all parties agree to mediation, the Mediation Provider will assign a Mediator, who will schedule a mediation session on a date and time, and at a location agreeable to the parties.
 - 3. All parties involved in a mediation must be informed of any representatives attending the proceedings at least seventy-two (72) hours before the beginning of the mediation.

B. Protection of Grievance Rights:

1. If a mediation request is submitted within fourteen (14) calendar days of an action or inaction giving rise to a grievance, the time to file a grievance is suspended. Should the grievant wish to continue with the grievance process, the grievance must be filed within seven (7) calendar days following the date of the termination of the mediation process.
2. If a mediation request is submitted after the filing of a timely grievance, the time to respond to the grievance is suspended. Should the grievant wish to continue with the grievance process, the agency must respond to the grievance within seven (7) calendar days following the termination of the mediation process.

C. Conclusion of the Mediation Process

1. Conclusion of the mediation process occurs when:
 - a. The mediation request is withdrawn;
 - b. The mediation request is declined;
 - c. The Mediator determines that future efforts at mediation would be futile;
or
 - d. Mediation occurs, and results in an agreement between the parties to the mediation.
2. Conclusion of the mediation process is effective on the date of mailing, e-mailing or hand delivery of a written notice of termination by the Mediator to the parties in the mediation process and to the Mediation Program.

D. Communications during Mediation not Admissible in Legal Proceedings

All proceedings held pursuant to or taken in conjunction with mediation 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 in furtherance thereof 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.

Section 18-30 Grievance Procedure

A. Defined:

A grievance is an allegation made by a Career Service employee regarding discrimination, harassment, retaliation, or violence in the workplace, or relating to actions/inactions taken by the employee's supervisor/manager that violate the employee's rights under the Rules, the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies. Notwithstanding the above definition, the following shall not be grieved:

1. Issues for direct appeal (see Rule 19 **APPEALS**);
2. Any aspect of the performance review program other than an employee's performance rating; (Revised May 12, 2017; Rule Revision Memo 26D)
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;
4. The mediation process;
5. A contemplation of discipline or disqualification notice or meeting; or
6. The assignment to or removal from an acting role, working out of class assignment, or Senior Command Staff status (as defined in Rule 5 **APPOINTMENTS AND STATUS**).

B. Filing of Grievance:

In order to file a grievance an employee must:

1. Prepare and complete all sections of the current OHR grievance form.
2. Deliver the grievance to the appointing authority or an HR representative of the employee's department or agency within twenty-one (21) calendar days after notification of the action or inaction which gives rise to the grievance. If the grievance is mailed or e-mailed, it must be received within the twenty-one (21) calendar days.
3. Employees must use their own personal time when preparing grievances unless they are granted permission by their supervisors to use paid work time.

C. Responding to Grievance:

The department or agency shall consider the grievance and within twenty-one (21) calendar days following receipt of the grievance provide the employee a dated, written notice of a decision. The written decision shall contain a certificate of delivery which indicates the date the decision was sent or delivered to the employee.

D. Computation of Time:

The period of time shall be computed as follows (all time periods are calendar days):

1. The date of notification of the action or inaction shall be the date the employee knew or should have known of the action or inaction.
2. The period of time for filing the grievance starts on the day following the date of notice of the action or inaction.
3. The date for responding to a grievance starts on the day following receipt of the grievance.
4. If the final date for filing or responding to a grievance falls on a day the OHR is not open for business, the final date shall be the next working day.
5. The grievance filing or response period ends at 5:00 p.m. on the final date.

E. Failure to Implement Remedy Granted in a Grievance Response:

If a remedy is granted in the grievance response, and the department or agency fails to implement it, the employee must notify the department or agency designee in writing of their intent to file an appeal within seven (7) calendar days following the date the employee knew or should have known of the department or agency's failure to implement the remedy. If the department/agency designee fails to implement the remedy within fourteen (14) calendar days, the employee may appeal to the Hearing Officer in accordance with the provisions of Rule 19 **APPEALS**.

18-31 Grievances of Alleged Discrimination, Harassment, or Retaliation
(Revised June 22, 2018; Rule Revision Memo 43D)

Grievances that allege discrimination, harassment, or retaliation, when the underlying action is not subject to a direct appeal, shall follow the standard grievance procedure, except as modified below.

- A. Deadlines: The deadlines for filing a grievance and responding to such a grievance shall not apply when the grievance alleges discrimination, harassment, or retaliation. Employees who experience or witness discriminatory, harassing, or retaliatory behavior are urged to report such behavior promptly so it can be investigated and addressed.
- B. Employees who experience discrimination, harassment, or retaliation in violation of these rules, are urged to follow the reporting procedures in Rule 16-22.

Section 18-40 Investigations

- A. The agency (or the entity or individual designated by the agency) will conduct a timely investigation, as appropriate, concerning any allegations of harassment, discrimination, or violence in the workplace, in violation of these rules.
- B. Employees subject to an investigation under this Rule 18 regarding misconduct shall be provided with a Garrity Advisement when there is potential criminal wrongdoing. The Garrity Advisement will be administered by the investigator. A Garrity Advisement advises an employee:
 - 1. The purpose of the questioning is to obtain information which will be used to determine whether disciplinary action is warranted;
 - 2. The purpose of the questioning is not to initiate criminal proceedings;
 - 3. In the event the employee discloses information which indicates he or she may be guilty of criminal conduct, neither the self-incriminating statements, nor the fruits thereof, will be used against him or her in any criminal proceeding;
 - 4. The employee must answer each question or face dismissal; and
 - 5. The employee has the right to resign immediately instead of being questioned.
- C. Evidence gathered through the investigation can only be used in a civil proceeding, even if the Garrity Advisement was not administered.
- D. The determination of the investigation regarding the alleged harassment, discrimination, or violence in the workplace, will be communicated to the complaining employee as soon as practicable.
- E. The agency will take action, as deemed appropriate, based on the outcome of the investigation.

RULE 19
APPEALS TO THE CAREER SERVICE HEARING OFFICE
(Effective January 10, 2018; Rule Revision Memo 33D)

Purpose Statement:

The purpose of this rule is to provide a fair, efficient, and speedy administrative review of actions of appointing authorities or an appointing authority's designee by the Career Service Hearing Office, except for disciplinary appeals filed by deputy sheriffs which are governed by Rule 20 **DISCIPLINARY APPEALS TO THE CAREER SERVICE HEARING OFFICE FILED BY DEPUTY SHERIFFS**.

Section 19-5 Hearing Office Hours

The Hearing Office shall be open for business from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for holidays and days when the City offices are closed or on modified hours due to inclement weather, a declared state of emergency, or for other good cause. The Hearing Office accepts electronic filings at any time, but filings made outside the Hearing Office's business hours will be deemed filed the following business day.

Section 19-10 Good Cause Defined

Except as otherwise stated in this Rule 19, good cause may be shown by circumstances beyond a party's control and does not generally include inadvertence, mistake, neglect or carelessness of the moving party. The lack of prejudice to the non-moving party does not constitute good cause.

Section 19-15 Alternative Dispute Resolution Available

A party may request mediation pursuant to Rule 18 **DISPUTE RESOLUTION** at any time during the appeal process. Parties are encouraged, but not required, to participate in mediation. Mediation will only be held if all parties agree to participate. Requesting mediation shall not suspend the time limitation for filing an appeal.

Section 19-20 Actions Subject to Appeal
(Revised February 24, 2023; Rule Revision Memo 85D)

A. Direct Appeals

1. A current employee who holds career status or a former employee who held career status in the Career Service must file an appeal directly with the Hearing Office in order to challenge the following action(s) of an appointing authority:
 - a. Dismissal;
 - b. Suspension or temporary reduction in pay;
 - c. Involuntary demotion with an attendant loss of pay;
 - d. Disqualification;

- e. Lay-off, or failure to re-instate (as may be required by Rule 3 **RECRUITMENT**); or
- f. A retaliatory adverse employment action, as defined by the City's "Whistleblower Protection" ordinance (attached as an appendix).
 - i. For any appeal filed pursuant to the "Whistleblower Protection" ordinance, the employee must identify in the Notice of Appeal the official misconduct reported, when and to whom the report was made, the retaliatory action, and when it occurred. The appeal may be dismissed with prejudice if the employee fails to comply with these requirements.
- g. No other action may be directly appealed.

It is not necessary that a grievance be filed, or an investigation be conducted before filing a direct appeal where it is alleged that the action being appealed involved discrimination, harassment or retaliation, or violation of the City's "Whistleblower Protection" ordinance. Discrimination, harassment, or retaliation can only be included as a part of a direct appeal.

- 2. 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 allege a violation of the "Whistleblower Protection" ordinance.

B. Appeals of Grievances:

- 1. An employee who holds career status may only appeal a grievance response to the Hearing Office:
 - a. That alleges a violation of the Career Service Rules ("Rules"), the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies which negatively impacted the employee's pay, benefits or status;
- 2. An employee who holds career status may also appeal a grievance:
 - a. In which the department or agency failed to implement the remedy granted and the grievant has notified the department or agency of the intent to file an appeal in accordance with Rule 18 **DISPUTE RESOLUTION**; or
 - b. In which the department or agency failed to respond as required by Rule 18 **DISPUTE RESOLUTION**.

3. The grievance must have been in conformance with and processed pursuant to the requirements of Rule 18 **DISPUTE RESOLUTION**.
4. Notwithstanding the above provisions, an employee in the Career Service cannot appeal a grievance of:
 - a. Any performance review rating or any other aspect of the performance review program;
 - b. A written reprimand;
 - c. An action that could have been the subject of a direct appeal;
 - d. Bonus or incentive payments, or any other aspect of the bonus or incentive program;
 - e. The mediation process;
 - f. A contemplation of discipline or disqualification notice or meeting;
 - g. The assignment to or removal from an acting role or working out of class assignment;
 - h. Alleged discrimination, retaliation, harassment, or violence in the workplace; or
 - i. Any action in which the remedy requested or available is outside the authority expressly granted to the Career Service Hearing Officer.

Section 19-30 Form of Appeal

Every appeal shall be on the form prescribed by the Hearing Office and shall include:

- A. The full name, mailing address, e-mail address, and telephone number of the employee ("appellant") filing the appeal;
 1. If a representative files the appeal on behalf of an employee, the appeal shall also contain the full name, mailing address (if filing by mail), e-mail address (if filing by email), and telephone number of the representative; and bar registration number if the representative is an attorney.
- B. The action which is the subject of the appeal;
- C. The reason for the appeal including, but not limited to, why the employee disagrees with the action which is the subject of the appeal;
- D. A statement of the remedy sought; and

- E. For all grievance appeals, the employee must identify in the Notice of Appeal the alleged violation of the Rules, the City Charter, ordinances, executive orders or written agency policies, and how the employee's pay, benefits or status were impacted.

The appeal may be dismissed with prejudice if the appellant fails to comply with these requirements.

19-31 Filing Deadlines

- A. 1. 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.
2. All other appeals shall be filed with the Hearing Office within fourteen (14) calendar days after the date of notice of the action being appealed.
- B. The period of time for filing the appeal starts on the day after the date of:
1. The alleged retaliatory adverse employment action in the case of an appeal brought under the "Whistleblower Protection" ordinance; or
2. The notice of the action or date of inaction in all other cases. When an action is evidenced by a written notice, the date of notice of the action shall be the date of the certificate of delivery or service.
- C. Compliance with these initial appeal filing deadlines is required to confer jurisdiction over the appeal to the Hearing Office.

19-32 Filing and Service Requirements

- A. Except for the appeal form, all documents that are required by this Rule 19 to be filed with the Hearing Office shall also be served on all parties to the appeal, or, if represented, to their representative(s). Such service shall be made on the same date and by the same method the document is filed with the Hearing Office.
- B. If the final date of the period allowed for filing a document required by this Rule 19 falls on a day the Hearing Office is not open for business, the due date is the next business day. The period for filing ends at 5:00 p.m. on the due date. In the event a document is received after normal business hours, it will be considered to have been filed on the next business day.
- C. The filing of documents required by this Rule 19 shall be made by:
1. Hand delivery;
2. First class or more restrictive U.S. mail or other commercial delivery service;
3. Electronic mail ("e-mail"). If documents are filed by e-mail, the party filing by e-mail shall retain both an electronic and a hard copy of the e-mail

including sender, date, subject, and the address to which the e-mail was sent; or

4. Facsimile.

D. Filing and service shall be made to the address or e-mail address provided:

1. By the party (or the party's representative); and
2. By the Hearing Office on its website.

19-33 Representation of Parties

A. All parties wishing to be represented shall promptly file a designation of representative signed by the representative.

B. Appellants may:

1. Represent themselves;
2. Be represented by an attorney; or
3. Be represented by a non-attorney as authorized by the Hearing Officer.

Section 19-40 Prehearing Procedures

All parties must adhere to the deadlines set forth in this Rule 19 and in the Notice of Hearing and Prehearing Order, as well as any other deadlines ordered by the Hearing Office.

19-41 Setting the Hearing Date, Length of Hearing, Continuances, and Stays

A. After an appeal is filed, the Hearing Officer shall:

1. Review the appeal for jurisdiction. If the Hearing Officer does not have jurisdiction, the Hearing Officer shall dismiss the appeal with prejudice. If jurisdiction is in dispute, the Hearing Officer may issue a show cause order to determine whether jurisdiction exists.
2. Set a hearing date that is no more than seventy-seven (77) calendar days after the date the Notice of Hearing and Pre-Hearing Order is issued. Within fourteen (14) calendar days of the Prehearing Order, either party may request that a new hearing date be set to accommodate the availability of a party, a party's representative, or a key witness.

B. Length of hearing:

1. The presumptive length of a hearing shall be no more than two days for the appeal of a dismissal, and one day for all other appeals. Longer hearings may be granted by the Hearing Officer only by the agreement of all parties or for good cause shown.

- a. Any party requesting that the hearing be scheduled for longer than the presumptive length must state with specificity how much additional time is needed to present evidence that is material and relevant, and is not duplicative of other evidence.
 - b. Good cause, for purposes of extending the length of the hearing, requires a specific showing that the presumptive length of the hearing will be insufficient to present evidence that is material and relevant to the issues presented, and not cumulative. The Hearing Officer may delay a ruling on whether good cause exists to extend the length of the hearing until the parties have made good faith efforts to stipulate to uncontested facts, the admissibility of exhibits, and the issues presented, and may deny such a request if the requesting party has not made such efforts in good faith.
 - c. The fact that the discipline being appealed is based on several events or types of alleged misconduct or that an appeal involves several issues or claims does not in and of itself establish good cause for extending the length of a hearing.
2. If two or more appeals are consolidated for hearing, the length of the hearing may be extended proportionately.

C. Continuances

1. Upon motion by either party, the Hearing Officer may grant a continuance of the hearing for good cause shown. Motions for a continuance filed less than fourteen (14) calendar days prior to the hearing are discouraged.
2. Good cause for a continuance generally means any cause not attributable to a party or a party's representative's act or omission. Good cause for a continuance will normally include a pending settlement or the sudden unavailability of a party, a party's representative, or a key witness due to his or her own or an immediate family member's illness, injury or death.
3. Good cause for a continuance will normally not include unavailability of a key witness if the witness's testimony can be taken by telephone or deposition; a party obtaining representation less than two (2) weeks prior to the hearing; or failure of a party or a party's representative to timely prepare for the hearing.

D. Stays

A Hearing Officer may stay a matter for good cause shown including, but not limited to, mutual agreement by the parties, a pending dispositive motion, or a pending settlement. When an interlocutory petition based on jurisdiction has been filed, the appeal before the Hearing Officer shall be automatically stayed.

19-42 Motions

The filing of motions shall be governed by the following:

- A. Before filing a motion, a party or his representative shall attempt to confer with the opposing party or his representative. The moving party shall include a certification that he either conferred with the opposing party or attempted to confer with the opposing party in good faith. If the motion is unopposed, the motion shall so state.
- B. Except as otherwise stated in this Rule 19, the responding party shall have seven (7) calendar days from the date of the motion to file a response. If there are less than seven (7) calendar days before the hearing, the responding party may provide a written or oral response at the hearing. No reply from the moving party shall be permitted unless requested by the Hearing Officer. Motions exceeding ten (10) pages are not permitted.
- C. Motions shall be determined promptly after the filing of the response, if any. However, the Hearing Officer may order expedited responses, oral argument or a hearing at his or her discretion or upon request of a party. The Hearing Officer shall not issue an order on an opposed motion until a response is filed or the response deadline has passed.

19-43 Discovery

Discovery is the process whereby parties share relevant documents, names of witnesses, and other information they may use during the hearing.

- A. Discovery shall be narrowly limited to issues of fact that are in dispute and relevant to the appeal.
- B. Initial Disclosures

Within fourteen (14) calendar days of the date the Notice of Hearing/Pre-Hearing Order was issued, each party shall, without awaiting a discovery request, provide to the other party:

- 1. The name and, if known, the address and telephone number of each individual the party may call to testify regarding the material issues of fact in dispute, identifying who the individual is and the subjects of the information;
- 2. A listing, together with a copy of, all documents, data compilations, and tangible things in the possession, custody, or control of the party which may be used by the party at hearing that are relevant to the material issues of fact in dispute and are not privileged or protected from disclosure.

C. Expert Disclosures

1. In most CSA appeals, expert witnesses are not helpful or required. It is within the Hearing Officer's discretion whether to allow expert testimony in a particular appeal. If the Hearing Officer does allow expert testimony, and certifies a witness as an expert on a particular subject matter, the Hearing Officer may give the expert testimony any weight it is due or no weight as appropriate.
2. Within thirty-five (35) calendar days of the date the Notice of Hearing/Pre-Hearing Order was issued, a party shall disclose to the other parties the identity of any person who may provide expert testimony at hearing.
3. The opposing party shall disclose to the other parties, no later than fourteen (14) calendar days prior to hearing, the identity of any person who may provide rebuttal expert testimony at hearing.
4. Expert disclosures shall be accompanied by a written report or summary containing a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

D. Written Discovery Requests

1. Written discovery requests shall be served no later than twenty-one (21) calendar days of the date the Notice of Hearing/Pre-Hearing Order was issued. Extensions of time to submit written discovery requests may be granted only on a showing of good cause.
 - a. Each party may submit up to five (5) requests for production of documents and five (5) interrogatories, including all discrete subparts.
 - b. Each written discovery request must be narrowly tailored to seek specific information or documents. Overbroad requests such as requests for "all e-mails exchanged between the employee, the employee's supervisor, and the decision maker for the last six months" shall not be permitted or enforced.
2. Responses to discovery requests must be provided within fourteen (14) calendar days after the certificate of mailing of the requests.
3. A party that disputes the sufficiency of discovery responses or the validity of objections asserted in responses to discovery may file a Motion to Compel no later than seven (7) calendar days after the date the discovery responses are received. The responding party has seven (7) calendar

days thereafter to file a response to the motion. As soon as practicable thereafter, the Hearing Officer shall issue a written order or an oral ruling in a telephone conference which shall be recorded.

- E. The party producing discovery may condition its production on the payment of reproduction costs at the rate of 25 cents per page. The Hearing Officer may waive or reduce the payment of such costs if the appellant demonstrates financial hardship.
- F. Parties and Hearing Officers shall not request or compel the production of documents by a non-party to the appeal.
- G. Parties shall not be permitted to take depositions unless an order is entered by the Hearing Officer.
- H. All discovery shall be completed at least fourteen (14) calendar days prior to hearing.

19-44 Prehearing Statements

- A. The parties shall file their prehearing statements at least fourteen (14) calendar days before the hearing date listing final witnesses (including a detailed summary of their offered testimony and the estimated time required for direct examination), final exhibits relevant to the issues being appealed, and any agreed upon stipulations of the parties.
- B. Failure to file a Prehearing Statement:
 - 1. Except in the case of extraordinary circumstances, if an appellant fails to timely file a prehearing statement, the appeal shall be considered abandoned and shall be dismissed with prejudice.
 - 2. Except in the case of extraordinary circumstances, if the department or agency fails to timely file a prehearing statement, the Hearing Officer shall impose appropriate non-monetary sanctions which may include reversal of the action being appealed.
- C. Evidence that was not disclosed timely by a party in a prehearing statement shall not be admissible at hearing absent a showing of good cause.

19-45 Subpoenas

Subpoenas to compel the attendance of witnesses at hearing, whose testimony is determined by the Hearing Officer to be relevant and necessary to the appeal, may be issued only by the Hearing Officer upon the motion of either party and supported by an offer of proof as to the material facts that will be provided by the witness.

- A. Such motions shall be filed within fifty-six (56) calendar days of the date the Notice of Hearing/Pre-Hearing Order was issued and shall describe with particularity the substance of the anticipated testimony sought from the non-party witness. The responding party has seven (7) calendar days thereafter to file a

response to the motion. The Hearing Officer shall, if practicable, issue an order regarding the motion within seven (7) calendar days of the date the responding party files a response to the motion, if any.

- B. Subpoenas shall be served on the witness to whom it is directed in the same manner as subpoenas served in proceedings in the district courts for the State of Colorado pursuant to Colorado Rule of Civil Procedure (C.R.C.P.) 45. A subpoena for testimony at a hearing shall be served at least forty-eight (48) hours before the first day of hearing. Immediately following service of a subpoena, the party who requested the subpoena shall serve a copy of the return of service on all parties.
- C. Any non-party or a representative thereof may move to quash or modify a subpoena.
- D. Appointing authorities shall make available for attendance at the hearing employees who have been properly and timely served with a subpoena issued by the Hearing Officer or at the request of the City Attorney's Office.
- E. Subpoenas properly and timely served on an individual may be enforced in accordance with the Denver City Charter.
- F. If it is not feasible for a subpoenaed witness to appear at the hearing in person, upon motion the Hearing Officer may require the witness to answer written interrogatories, to appear at a deposition, or to testify remotely by telephone or other means. The Hearing Officer shall require that the costs of such a deposition be paid by the party requesting the witness' testimony.

19-46 Pre-hearing Conference

The Hearing Officer may, at the request of the parties or on the Hearing Officer's own initiative, schedule a pre-hearing conference to define the issues for hearing, encourage alternate dispute resolution, resolve pending motions, or otherwise assist the parties in obtaining a fair and efficient resolution of the appeal.

Section 19-50 Hearing Process

The Hearing Officer shall conduct the hearing in as informal a manner as is consistent with a fair, efficient, and speedy presentation of the appeal.

Whether and how the Colorado Rules of Evidence shall be applied lies within the discretion of the Hearing Officer.

19-51 Exhibits

- A. Number of exhibits:
 - 1. Each party may introduce up to fifty (50) exhibits at hearing. If a party identifies more than fifty (50) exhibits in its prehearing statement, only the first fifty (50) exhibits may be introduced, with the remainder excluded.

2. Except for purposes of impeachment and/or rebuttal, a party may only introduce exhibits at hearing which have been identified in the party's prehearing statement.
- B. Each party to the appeal is responsible for deciding what exhibits to use and admit into evidence in support of its case.
 - C. Except for purposes of impeachment and/or rebuttal, a party may only introduce exhibits at hearing which have been identified in the party's prehearing statement. Any exhibit listed in a prehearing statement is considered as offered for admission at the hearing, and the opposing party may stipulate to its admission. In such situations, the exhibit shall be admitted into evidence. In consolidated appeals, stipulated exhibits are only deemed admitted by the stipulating parties.
 - D. An exhibit shall typically consist of one document, such as a manual, an e-mail string, or a memorandum. Multiple documents shall not be combined or identified as a single exhibit except as agreed by the parties.
 - E. Each party must provide a copy of its exhibits to the opposing party no later than the deadline for the filing of prehearing statements. If a party fails to provide a copy of an exhibit to the opposing party by this deadline, that party shall not be permitted to introduce the exhibit at hearing absent a showing of good cause. However, the parties may stipulate to the admissibility of an exhibit after this deadline.

19-52 Witnesses

- A. Number of Witnesses:
 1. Each party may call up to fifteen (15) witnesses at hearing, including parties and rebuttal witnesses. If a party identifies more than fifteen (15) witnesses in its prehearing statement, the first fifteen (15) witnesses listed may be called to testify, and the remainder shall not be permitted to testify.
 2. Except for purposes of impeachment and/or rebuttal, a party may only call witnesses to testify at hearing who have been identified in that party's prehearing statement.
- B. Each party to the appeal is responsible for deciding which witnesses to call in support of its case.
- C. A rebuttal witness may only be called to rebut specific material testimony or evidence admitted in the opposing party's case-in-chief that could not be reasonably anticipated based on the opposing party's prehearing statement.

19-53 Submission on Briefs

In cases where the material facts are undisputed, and the appellant only disputes the level of discipline imposed and not the facts underlying the disciplinary action, the

Hearing Officer may, with the agreement of the parties, order the matter to be resolved by written briefs in lieu of conducting an appeal hearing. In that case, the Hearing Officer and the parties shall establish a briefing schedule and the Hearing Officer shall decide the appeal based exclusively on the facts (including exhibits) stipulated by the parties and arguments contained in the briefs submitted by the parties.

19-54 Conduct of Hearing

- A. Any stipulated exhibits and facts shall be admitted into evidence at the beginning of hearing.
- B. Any recommendations made during the investigative/disciplinary process are presumptively inadmissible.
- C. The party with the burden of proof shall proceed first and may call witnesses and seek the admission of evidence. The opposing party shall proceed second and may call witnesses and seek the admission of additional evidence. Witnesses may be called out of order as determined by the Hearing Officer. The party with the burden of proof may present rebuttal evidence at the close of the opposing party's case.
- D. The parties may present evidence and witnesses, and may cross-examine the other party's witnesses.
 - 1. Testimony shall be given under oath or affirmation.
 - 2. At the request of the opposing party, the Hearing Officer may require an offer of proof before beginning the testimony of any witness to establish the witness's testimony is necessary to resolve the issues on appeal.
 - 3. A party may examine any hostile witness with leading questions.
 - 4. No witness shall be badgered, abused, insulted, or berated. The Hearing Officer may cut short any examination being conducted in an unproductive or unprofessional manner. The Hearing Officer may examine that witness or direct the examiner to inquire only about topics germane to the resolution of the appeal.

19-55 Burden of Proof

In any appeal, the following burdens of proof apply:

- A. Disciplinary appeals are reviewed de novo and the department or agency has the burden of proof by a preponderance of the evidence to establish that the appellant engaged in the misconduct as alleged in the Notice of Discipline and the discipline imposed was within a reasonable range of alternatives.
- B. If an appellant raises the issue of violation of the "Whistleblower Protection" ordinance, the appellant has the burden of proof by a preponderance of the evidence on that issue.

- C. For an appeal of a grievance or layoff, the appellant has the burden of proof to show the department or agency acted arbitrarily, capriciously, or contrary to rule or law.
- D. For an appeal of a disqualification, the agency has the burden of proof based on a preponderance of the evidence.
- E. For burden of proof issues not specifically addressed herein, the appellant has the burden of proof by a preponderance of the evidence.

19-56 Record of Hearing

Only one record of the hearing shall be made. The record may be made by court reporter or any reliable recording device approved by the Hearing Officer. Parties, their representatives, and observers are prohibited from recording the hearing. Parties and their representatives may obtain a copy of the record through the Hearing Office at the requesting party's expense.

19-57 Public or Private Hearing

- A. The hearing shall be open to the public except that the Hearing Officer may, upon the motion of an interested party, conduct the hearing or some part of the hearing in private if doing so serves the interests of the parties and the public.
- B. All witnesses, except the department or agency's advisory witness, shall be sequestered until completion of the hearing. Attorneys for the City may consult with their client regarding the testimony presented by other witnesses even if these clients may also be called as witnesses.

19-58 Decision of Hearing Officer

The Hearing Officer shall issue a written decision which includes findings of fact and conclusions of law affirming, modifying, or reversing the action which gave rise to the appeal within forty-nine (49) calendar days after the date on which the record is closed, or as soon as practicable thereafter. This decision shall be binding upon all parties, although subject to appeal, and shall contain findings on each issue necessary to resolve the appeal. The Hearing Officer's decision shall include a Notice of Appeal Rights advising the parties of the right of appeal to the Career Service Board in accordance with Rule 21 **APPEALS TO THE CAREER SERVICE BOARD**.

APPENDIX 19.A.

RELEVANT PROVISIONS OF THE WHISTLEBLOWER PROTECTION ORDINANCE SECTION 2-100 OF THE DENVER REVISED MUNICIPAL CODE

Sec. 2-106. Legislative Declaration

The city council hereby determines and declares that employees of the City and County of Denver should never suffer retaliation from their supervisors or appointing authorities for communicating information about illegal activities, unethical practices or other forms of official misconduct experienced or witnessed by employees in the scope of their employment. The interests of the City and County and Denver and the larger interests of the citizens of Denver are served by encouraging all employees to speak out fully and frankly on any official misconduct which comes to their attention without fear of retaliation. Therefore, the purpose of this Article VII is to eliminate the possibility or the threat of any adverse employment action that may be taken against any City and County employee for reporting such information to appropriate reporting authorities.

Sec. 2-107. Definitions

As used in this Article VII:

- (a) “Appropriate reporting authority” means any officer, board or commission, or other person or entity vested with legal authority to receive, investigate, or act upon reports of official misconduct by officers and employees of the City and County, including, by way of example:
 - (1) The mayor and members of the mayor’s cabinet;
 - (2) The city council, any committee of the city council, and individual members of the city council;
 - (3) The auditor and the audit committee;
 - (4) The board of ethics;
 - (5) The district attorney and other law enforcement agencies; or
 - (6) The appointing authority for the officer or employee who is alleged to have engaged in the official misconduct that is the subject of the report.
- (b) “Adverse employment action” means any direct or indirect form of employment discipline or penalty, including, but not limited to, dismissal, suspension, demotion, transfer, reassignment, official reprimand, adverse performance evaluation, withholding of work, denial of any compensation or benefit, lay-off, or threat of any such discipline or penalty.
- (c) “Employee” means any employee of the City and County of Denver within the meaning of § 1.2.11 of the charter.

- (d) "Official misconduct" means any act or omission that is committed, intended, or planned by any officer or employee of the City and County that constitutes:
- (1) A violation of law;
 - (2) A violation of any applicable rule, regulation or executive order;
 - (3) A violation of the code of ethics as codified in article IV of this chapter 2, or any other applicable ethical rules and standards;
 - (4) The misuse, misallocation, mismanagement or waste of any city funds or other city assets; or
 - (5) An abuse of official authority.
- (e) "Supervisor" means any person who is authorized to recommend or to impose any adverse employment action upon an employee.

Sec. 2-108. Retaliation prohibited.

- (a) Except as provided in subsection (b) of this section, no supervisor shall impose or threaten to impose any adverse employment action upon an employee on account of the employee's disclosure of information about any official misconduct to any person.
- (b) The protections afforded by this Article VII shall not apply to any employee:
- (1) Who discloses information that the employee knows to be false or who discloses information without regard for the truth or falsity thereof;
 - (2) Who discloses information in a manner prohibited by law including, by way of example, information that is prescribed as being confidential by law; or
 - (3) Who otherwise discloses information in bad faith.
- (c) It shall be the obligation of an employee who wishes to disclose information under the protection of this Article VII to make a good faith effort to provide to an appropriate reporting authority the information to be disclosed prior to the time of its disclosure. The protection of this Article VII shall not extend to reports of official misconduct that are made anonymously.

Sec. 2-109. Remedies.

- (a) Employees in the career service. Any employee in the career service may file a complaint with the career service board or its designated hearing officer alleging a violation of section 2-108 within thirty (30) days of the alleged retaliatory adverse employment action. The complaint shall be processed in accordance with the rules of the board governing employee appeals; provided, however, that the employee shall not be required to pursue a complaint or grievance within the employee's department or agency prior to appealing the alleged retaliatory adverse employment action to the board or its designated hearing officer. In addition to the foregoing procedure, any employee who is otherwise contesting a disciplinary action before the board or its designated hearing officer in accordance with the rules of the board may defend against the disciplinary action upon a showing by the employee that the disciplinary action constitutes a violation of section 2-108. In either event, if the board or the designated hearing officer finds that a violation of section 2-108 has occurred, the board or the hearing officer shall order appropriate relief on behalf of the employee including, but not limited to, reinstatement, back pay, restoration of all benefits and seniority rights, and the expunging of the records of any retaliatory adverse employment action made in violation of section 2-108.

- (d) Sanction against supervisors. Upon a determination by the career service board or its designated hearing officer, the civil service commission or its designated hearing officer, or an appointing authority that a violation of section 2-108 has occurred, any supervisor who committed the violation shall be subject to appropriate disciplinary action by the supervisor's appointing authority, up to and including termination from employment.

Sec. 2-110. Posting Required.

All departments, agencies and other appointing authorities of the City and County of Denver shall post and maintain, in one or more prominent locations accessible to employees of the department or agency, a notice of the rights and protections afforded to employees by this Article VII. The notice shall be in a form approved by the city attorney.

This Appendix is provided for informational purposes and is not considered a part of the Rules.

RULE 20
DISCIPLINARY APPEALS TO THE CAREER SERVICE HEARING OFFICE
FILED BY DEPUTY SHERIFFS

(Effective January 10, 2018; Rule Revision Memo 33D)

Purpose Statement:

The purpose of this rule is to provide a fair, efficient, and speedy administrative review of disciplinary actions of appointing authorities or an appointing authority's designee by the Career Service Hearing Office ("Hearing Office") filed by members of the Denver Sheriff Department ("DSD") in deputy sheriff classifications.

Section 20-5 Hearing Office Hours

The Hearing Office shall be open for business from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for holidays and days when the City offices are closed or on modified hours due to inclement weather, a declared state of emergency, or for other good cause. The Hearing Office accepts electronic filings at any time, but filings made outside the Hearing Office's business hours will be deemed filed the following business day.

Section 20-10 Definitions

- A. Good cause: Except as otherwise stated in this Rule 20, good cause may be shown by circumstances beyond a party's control and does not generally include inadvertence, mistake, neglect or carelessness of the moving party. The lack of prejudice to the non-moving party does not constitute good cause.
- B. EDOS: Executive Director of the Department of Safety, including his or her designee.
- C. Discipline or disciplinary action: The Departmental Order of Disciplinary Action issued by the EDOS or his or her designee.

Section 20-15 Alternative Dispute Resolution Available

A party may request mediation pursuant to Rule 18 **DISPUTE RESOLUTION** at any time during the appeal process. Parties are encouraged, but not required, to participate in mediation. Mediation will only be held if all parties agree to participate. Requesting mediation shall not suspend the time limitation for filing an appeal.

Section 20-20 Actions Subject to Appeal

- A. A current deputy sheriff who holds career status or a former deputy sheriff who held career status in the Career Service must file an appeal directly with the Hearing Office in order to challenge the following disciplinary actions of an appointing authority:
 - 1. Dismissal;
 - 2. Suspension or temporary reduction in pay; and
 - 3. Involuntary demotion with an attendant loss of pay. Removal from an acting position is not a demotion. Removal of an employee from Senior Command Staff status (as defined in Rule 5 **APPOINTMENTS AND STATUS**) is not considered

an involuntary demotion, and cannot be appealed.

- B. All other grounds for an appeal permitted by the Career Service Rules not involving discipline (e.g., disqualifications, layoffs, Whistleblower Protection ordinance where the adverse action is not discipline, and grievances) must be filed in accordance with Rule 19 **APPEALS TO THE CAREER SERVICE HEARING OFFICE.**

Section 20-30 Form of Appeal

Every appeal shall be on the form prescribed by the Hearing Office and shall include:

- A. The full name, mailing address, e-mail address, and telephone number of the employee (“appellant”) filing the appeal;
 - 1. If a representative files the appeal on behalf of an employee, the appeal shall also contain the full name, mailing address (if filing by mail), e-mail address (if filing by email), and telephone number of the representative; and bar registration number if the representative is an attorney.
- B. The action which is the subject of the appeal;
- C. The reason for the appeal including, but not limited to, why the employee disagrees with the action which is the subject of the appeal; and
- D. A statement of the remedy sought.

The appeal may be dismissed with prejudice if the appellant fails to comply with these requirements.

20-31 Filing Deadlines

- A. All appeals of disciplinary actions pursuant to this Rule 20 shall be filed with the Hearing Office within fourteen (14) calendar days after the date of notice of the discipline being appealed.
- B. The period of time for filing the appeal starts on the day after the date of the written notice of the disciplinary action, which shall be the date shown in the certificate of delivery or service.
- C. Compliance with these initial appeal filing deadlines is required to confer jurisdiction over the appeal to the Hearing Office.

20-32 Filing and Service Requirements

- A. Except for the appeal form, all documents that are required by this Rule 20 to be filed with the Hearing Office shall also be served on all parties to the appeal, or, if represented, to their representative(s). Such service shall be made on the same date and by the same method the document is filed with the Hearing Office.
- B. If the final date of the period allowed for filing of a document required by this Rule 20 falls on a day the Hearing Office is not open for business, the due date is the next business day. The period for filing ends at 5:00 p.m. on the due date. In the

event a document is received after normal business hours, it will be considered to have been filed on the next business day.

- C. The filing of documents required by this Rule 20 shall be made by:
 - 1. Hand delivery;
 - 2. First class or more restrictive U.S. mail service or other commercial delivery service;
 - 3. Electronic mail (“e-mail”). If documents are filed by e-mail, the party filing by e-mail shall retain both an electronic and a hard copy of the e-mail including sender, date, subject, and the address to which the e-mail was sent; or
 - 4. Facsimile.
- D. Filing and service shall be made to the address or e-mail address provided:
 - 1. By the party (or the party’s representative); and
 - 2. By the Hearing Office on its website.

20-33 Representation of Parties

- A. Appellants may:
 - 1. Represent themselves;
 - 2. Be represented by an attorney; or
 - 3. Be represented by a non-attorney as authorized by the Hearing Officer.
- B. If an appellant is represented, a designation signed by the representative shall be promptly filed.

Section 20-40 Prehearing Procedures

All parties must adhere to the deadlines set forth in this Rule 20 and in the Notice of Hearing and Prehearing Order, as well as any other deadlines ordered by the Hearing Office.

20-41 Setting the Hearing Date, Length of Hearing, Continuances, and Stays

- A. After an appeal is filed, the Hearing Officer shall:
 - 1. Review the appeal for jurisdiction. If the Hearing Officer does not have jurisdiction, the Hearing Officer shall dismiss the appeal with prejudice. If jurisdiction is in dispute, the Hearing Officer may issue a show cause order to determine whether jurisdiction exists.

2. Set a hearing date that is no more than seventy-seven (70) (77) calendar days after the date the appeal was filed Notice of Hearing and Pre-Hearing Order is issued. Within fourteen (14) calendar days of the Prehearing Order, either party may request that a new hearing date be set to accommodate the availability of a party, a party's representative, or a key witness.
3. Nothing in this rule prohibits any party from raising jurisdictional issues at any time during the appeal.

B. Length of hearing

1. The presumptive length of a hearing shall be no more than two days for the appeal of a dismissal, and one day for all other appeals. Longer hearings may be granted by the Hearing Officer only by the agreement of all parties or for good cause shown.
 - a. Any party requesting that the hearing be scheduled for longer than the presumptive length must state with specificity how much additional time is needed to present evidence that is material and relevant, and is not duplicative of other evidence.
 - b. Good cause, for purposes of extending the length of the hearing, requires a specific showing that the presumptive length of the hearing will be insufficient to present evidence that is material and relevant to the issues presented, and not cumulative. The Hearing Officer may delay a ruling on whether good cause exists to extend the length of the hearing until the parties have made good faith efforts to stipulate to uncontested facts, the admissibility of exhibits, and the issues presented, and may deny such a request if the requesting party has not made such efforts in good faith.
 - c. The fact that the discipline being appealed is based on several events or types of alleged misconduct or that an appeal involves several issues or claims does not in and of itself establish good cause for extending the length of a hearing.
2. If two or more appeals are consolidated for hearing, the length of the hearing may be extended proportionately.

C. Continuances

1. Upon motion by either party, the Hearing Officer may grant a continuance of the hearing for good cause shown. Motions for a continuance filed less than fourteen (14) days prior to the hearing are discouraged.
2. Good cause for a continuance generally means any cause not attributable to a party or a party's representative's act or omission. Good cause for a continuance will normally include a pending settlement or the sudden unavailability of a party, a party's representative, or a key witness due to his or her own or an immediate family member's illness, injury or death.

3. Good cause for a continuance will normally not include: unavailability of a key witness if the witness's testimony can be taken by telephone or deposition; a party obtaining representation less than two (2) weeks prior to the hearing; or failure of a party or a party's representative to timely prepare for the hearing.

D. Stays

A Hearing Officer may stay a matter for good cause shown including, but not limited to, mutual agreement by the parties, a pending dispositive motion, or a pending settlement. When an interlocutory petition based on jurisdiction has been filed, the appeal before the Hearing Officer shall be automatically stayed.

20-42 Motions

The filing of motions shall be governed by the following:

- A. Before filing a motion, a party or his representative shall attempt to confer with the opposing party or his representative. The moving party shall include a certification that he either conferred with the opposing party or attempted to confer with the opposing party in good faith. If the motion is unopposed, the motion shall so state.
- B. Except as otherwise stated in this Rule 20, the responding party shall have seven (7) calendar days from the date of the motion to file a response. If there are less than seven (7) calendar days before the hearing, the responding party may provide a written or oral response at the hearing. No reply from the moving party shall be permitted unless requested by the Hearing Officer. Motions in excess of ten (10) pages are not permitted.
- C. Motions shall be determined promptly after the filing of the response, if any. However, the Hearing Officer may order expedited responses, oral argument or a hearing at his or her discretion or upon request of a party. The Hearing Officer shall not issue an order on an opposed motion until a response is filed or the response deadline has passed.

20-43 Discovery

Discovery is the process whereby parties exchange relevant documents, names of witnesses, and other information they may use during the hearing.

- A. Discovery shall be narrowly limited to the issues of fact that are in dispute and relevant to the appeal.
- B. Initial Disclosures
 1. Within fourteen (14) calendar days of the date the Notice of Hearing/Pre-Hearing Order was issued, each party shall, without awaiting a discovery request, provide to the other party:

- a. The name and, if known, the address and telephone number of each individual the party may call to testify regarding the material issues of fact in dispute, identifying who the person is and the subjects of the information;
 - b. A listing, together with a copy of, all documents, data compilations, and tangible things in the possession, custody, or control of the party which may be used by the party at hearing that are relevant to the material issues of fact in dispute and are not privileged or protected from disclosure.
2. Within fourteen (14) days of the date the appeal was filed, the DOS shall provide the entire Internal Affairs Bureau (“IAB”) file to the appellant. The DOS is permitted to redact names and other personal identifying information relating to minors or victims, redact any witnesses’ or third-parties’ personal identifying information, and redact or remove documents that are or contain information that is privileged or confidential by law. The DOS shall provide a privilege log to the appellant with respect to any documents redacted or removed from the IAB file based on the asserted privilege no later than seven (7) days after providing the IAB file.

C. Expert Disclosures

1. In most CSA appeals, expert witnesses are not helpful or required. It is within the Hearing Officer’s discretion whether to allow expert testimony in a particular appeal. If the Hearing Officer does allow expert testimony, and certifies a witness as an expert on a particular subject matter, the Hearing Officer may give the expert testimony any weight it is due or no weight as appropriate.
2. Within thirty-five (35) days of the date the Notice of Hearing/Pre-Hearing Order was issued, a party shall disclose to the other parties the identity of any person who may provide expert testimony at hearing.
3. The opposing party shall disclose to the other parties, no later than fourteen (14) days prior to hearing, the identity of any person who may provide rebuttal expert testimony at hearing.
4. Expert disclosures shall be accompanied by a written report or summary containing a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

D. Written Discovery Requests

1. Written discovery requests shall be served no later than twenty-one (21) calendar days after the date the Notice of Hearing/Pre-Hearing Order was

issued. Extensions of time to submit written discovery requests may be granted only on a showing of good cause.

- a. Each party may submit up to five (5) requests for production of documents and five (5) interrogatories, including all discrete subparts.
 - b. Each written discovery request must be narrowly tailored to seek specific information or documents. Overbroad requests such as requests for “all e-mails exchanged between the employee, the employee’s supervisor, and the decision maker for the last six months” shall not be permitted or enforced.
2. Responses to discovery requests must be provided within fourteen (14) days after the certificate of mailing of the requests.
 3. A party that disputes the sufficiency of discovery responses or the validity of objections asserted in responses to discovery may file a Motion to Compel no later than seven (7) calendar days after the date the discovery responses are received. The responding party has seven (7) calendar days thereafter to file a response to the motion. As soon as practicable thereafter, the Hearing Officer shall issue a written order or an oral ruling in a telephone conference which shall be recorded.
- E. The party producing discovery may condition its production on the payment of reproduction costs at the rate of 25 cents per page. The Hearing Officer may waive or reduce the payment of such costs if the appellant demonstrates financial hardship.
- F. Parties and Hearing Officers shall not request or compel the production of documents by any non-party to the appeal, such as the Office of the Independent Monitor (“OIM”).
- G. Parties shall not be permitted to take depositions unless an order is entered by the Hearing Officer in accordance with subparagraph 20-45 F.
- H. All discovery shall be completed at least fourteen (14) days prior to hearing.

20-44 Prehearing Statements

- A. The parties shall file their prehearing statements at least fourteen (14) calendar days before the hearing date listing final witnesses (including a detailed summary of their offered testimony and the estimated time required for direct examination), final exhibits relevant to the issues being appealed, and any agreed upon stipulations of the parties.
- B. Failure to file a Prehearing Statement:
1. Except in the case of extraordinary circumstances, if an appellant fails to timely file a prehearing statement, the appeal shall be considered abandoned and shall be dismissed with prejudice.

2. Except in the case of extraordinary circumstances, if the Department of Safety (“DOS”) fails to timely file a prehearing statement, the Hearing Officer shall impose appropriate non-monetary sanctions which may include reversal of the disciplinary action being appealed.
- C. Evidence that was not disclosed timely by a party in a prehearing statement shall not be admissible at hearing absent a showing of good cause.

20-45 Subpoenas

Subpoenas to compel the attendance of witnesses at hearing, whose testimony is determined by the Hearing Officer to be relevant and necessary to the appeal, may only be issued by the Hearing Officer upon the motion of either party and supported by an offer of proof as to the material facts that will be provided by the witness.

- A. Such motions shall be filed within fifty-six (56) calendar days of the date the Notice of Hearing/Pre-Hearing Order was issued and shall describe with particularity the substance of the anticipated testimony sought from the non-party witness. The responding party has seven (7) calendar days thereafter to file a response to the motion. The Hearing Officer shall, if practicable, issue an order regarding the motion within seven (7) calendar days of the date the responding party files a response to the motion, if any.
- B. Subpoenas shall be served on the witness to whom it is directed in the same manner as subpoenas served in proceedings in the district courts for the State of Colorado pursuant to Colorado Rule of Civil Procedure (C.R.C.P.) 45. A subpoena for testimony at a hearing shall be served at least forty-eight (48) hours before the first day of hearing. Immediately following service of a subpoena, the party who requested the subpoena shall serve a copy of the return of service on all parties.
- C. Any non-party or a representative thereof may move to quash or modify a subpoena.
- D. Appointing authorities shall make available for attendance at the hearing employees who have been properly and timely served with a subpoena issued by the Hearing Officer or at the request of the City Attorney’s Office.
- E. Subpoenas properly and timely served on an individual may be enforced in accordance with the Denver City Charter.
- F. If it is not feasible for a subpoenaed witness to appear at the hearing in person, upon motion the Hearing Officer may require the witness to answer written interrogatories, to appear at a deposition, or to testify remotely by telephone or other means. The Hearing Officer shall require that the costs of such a deposition be paid by the party requesting the witness’ testimony.

20-46 Pre-hearing Conference

The Hearing Officer may, at the request of the parties or on the Hearing Officer's own initiative, schedule a pre-hearing conference to define the issues for hearing, encourage alternate dispute resolution, resolve pending motions, or otherwise assist the parties in obtaining a fair and efficient resolution of the appeal.

Section 20-50 Hearing Process

The Hearing Officer shall conduct the hearing in as informal a manner as is consistent with a fair, efficient, and speedy presentation of the appeal.

Whether and how the Colorado Rules of Evidence shall be applied lies within the discretion of the Hearing Officer.

20-51 Evidence Allowed

- A. Evidence must be relevant to be admitted at hearing. Relevant evidence is evidence that may make the existence of any material fact more probable or less probable than it would be without the evidence.
- B. Evidence of compromise or settlement negotiations regarding the dispute being litigated shall not be admissible.

20-52 Exhibits

- A. Each party to the appeal is responsible for deciding what exhibits to use and admit into evidence in support of its case.
- B. Except for purposes of impeachment and/or rebuttal, a party may only introduce exhibits at hearing which have been identified in the party's prehearing statement. Any exhibit listed in a prehearing statement is considered as offered for admission at the hearing, and the opposing party may stipulate to its admission. In such situations, the exhibit shall be admitted into evidence. In consolidated appeals, stipulated exhibits are only deemed admitted by the stipulating parties.
- C. Other than the IAB file which may be listed and offered by the DOS as a single exhibit, an exhibit shall typically consist of one document, such as a manual, an e-mail string, or a memorandum. Multiple documents shall not be combined or identified as a single exhibit except as agreed by the parties.
- D. Each party must provide a copy of its exhibits to the opposing party no later than the deadline for the filing of prehearing statements. If a party fails to provide a copy of an exhibit to the opposing party by this deadline, that party shall not be permitted to introduce the exhibit at hearing absent a showing of good cause. However, the parties may stipulate to the admissibility of an exhibit after this deadline.

20-53 Witnesses

- A. Each party to the appeal is responsible for deciding which witnesses to call in support of its case.
- B. Except for purposes of impeachment and/or rebuttal, a party may only call witnesses to testify at hearing who have been identified in that party's prehearing statement.
- C. A rebuttal witness may only be called to rebut specific material testimony or evidence admitted in the opposing party's case-in-chief that could not be reasonably anticipated based on the opposing party's prehearing statement.

20-54 Submission on Briefs

In cases where the material facts are undisputed, and the appellant only disputes the level of discipline imposed and not the facts underlying the disciplinary action, the Hearing Officer may, with the agreement of the parties, order the matter to be resolved by written briefs in lieu of conducting an appeal hearing. In that case, the Hearing Officer and the parties shall establish a briefing schedule and the Hearing Officer shall decide the appeal based exclusively on the facts (including exhibits) stipulated by the parties and arguments contained in the briefs submitted by the parties.

20-55 Conduct of Hearing

- A. Any stipulated exhibits and facts shall be admitted into evidence at the beginning of hearing.
- B. IAB File and Order of Discipline: The Order of Discipline and any non-privileged relevant document or other relevant material in the IAB file shall be presumptively admissible and admitted into evidence upon proffer or motion by either party, subject to the limitations on admission of recommendations for appropriate discipline as provided in subparagraph C below.
 - 1. The Hearing Officer shall not consider any objection to the admissibility of any Internal Affairs file document or other material on any basis other than relevance, privilege, and/or privacy.
 - 2. The DOS may, but is not required to, supplement its initial offering of evidence from the IAB case with testimonial and/or documentary evidence.
- C. Any recommendations made during the investigative/disciplinary process shall not be admissible.
- D. Matrix: If discipline has been imposed pursuant to a disciplinary matrix, the matrix in effect at the time the misconduct occurred and any writings adopted by the EDOS in explanation of that matrix shall be given deference by the Hearing Officer. If the Hearing Officer modifies the disciplinary penalty imposed by the EDOS, the modified penalty must be consistent with the principles of the matrix.

- E. The appellant shall proceed first and may call witnesses and seek the admission of evidence. The DOS shall proceed second and may call witnesses and seek the admission of additional evidence. Witnesses may be called out of order as determined by the Hearing Officer. The appellant may present rebuttal evidence at the close of the DOS's case.
- F. The parties may present evidence and witnesses, and may cross-examine the other party's witnesses.
 - 1. Testimony shall be given under oath or affirmation.
 - 2. At the request of the opposing party, the Hearing Officer may require an offer of proof before beginning the testimony of any witness to establish the witness's testimony is necessary to the resolution of the issues on appeal.
 - 3. A party may examine any hostile witness with leading questions.
 - 4. No witness shall be badgered, abused, insulted, or berated. The Hearing Officer may cut short any examination being conducted in an unproductive or unprofessional manner. The Hearing Officer may examine that witness or direct the examiner to inquire only about topics germane to the resolution of the appeal.

20-56 Burden of Proof

- A. Disciplinary appeals to the Career Service Hearing Office are not de novo hearings. The appellant bears the ultimate burden of proof in disciplinary appeals to show that the decision by the EDOS was clearly erroneous and/or that the application of the disciplinary matrix was clearly erroneous.
- B. In reviewing the disciplinary action:
 - 1. The Hearing Officer shall give due weight to the EDOS's need to maintain administrative control of the Department.
 - a. The Hearing Officer shall not substitute his or her judgment for that of the EDOS concerning any policy considerations underlying the discipline, to include the interpretation of Departmental rules and regulations, and may only reverse or modify the EDOS's decision concerning policy considerations when it is shown to be clearly erroneous. The Hearing Officer shall not substitute his or her judgment for that of the EDOS in determining the appropriate level of penalty to be imposed for a sustained violation, and may only modify the disciplinary penalty imposed when it is shown to be clearly erroneous.
 - b. The Hearing Officer may reverse or modify the EDOS's order of discipline on the basis of issues raised by the appellant concerning policy considerations, a sustained rule violation or an imposed penalty, only when it is shown to be clearly erroneous.

- c. Discipline shall be deemed to be “clearly erroneous,” in whole or in part, in the following circumstances:
 - i. The decision, although supported by the evidence, is contrary to what a reasonable person would conclude from the record as a whole;
 - ii. If the EDOS fails to follow the applicable Departmental guidelines, rules or regulations, an applicable matrix or its associated guidelines, and absent such failure the discipline imposed would not have resulted; or
 - iii. If the EDOS otherwise exceeds his or her authority.
- C. In rendering a decision, the Hearing Officer should consider the following: the interests of the individual employee and the safety, health, welfare, and liability interests of the Department, other employees, inmates, and the citizens of the City and County of Denver.
- D. If an appellant raises the issue of violation of the City’s “Whistleblower Protection” ordinance in connection with the disciplinary action, the appellant has the burden of proof by a preponderance of the evidence on that issue.
- E. For burden of proof issues not specifically addressed herein, the appellant has the burden of proof by a preponderance of the evidence.

20-57 Record of Hearing

Only one record of the hearing shall be made. The record may be made by court reporter or any reliable recording device approved by the Hearing Officer. Parties, their representatives, and observers are prohibited from recording the hearing. Parties and their representatives may obtain a copy of the record through the Hearing Office at the requesting party’s expense.

20-58 Public or Private Hearing

- A. The hearing shall be open to the public except that the Hearing Officer may, upon the motion of an interested party, conduct the hearing or some part of the hearing in private if doing so serves the interests of the parties and the public.
- B. All witnesses, except the DOS’s advisory witness, shall be sequestered until completion of the hearing. Attorneys for the DOS may consult with their clients regarding the testimony presented by other witnesses even if these clients may also be called as witnesses.

20-59 Decision of Hearing Officer

The Hearing Officer shall issue a written decision which includes findings of fact and conclusions of law affirming, modifying, or reversing the action which gave rise to the appeal within forty-nine (49) calendar days after the date on which the record is closed, or as soon as practicable thereafter. The decision shall address each violation of departmental rules and regulations, and each respective penalty imposed, as may be a subject of the appeal. This decision shall be binding upon all parties, although subject to appeal, and shall contain findings on each issue necessary to resolve the appeal. The Hearing Officer's decision shall include a Notice of Appeal Rights advising the parties of the right of appeal to the Career Service Board in accordance with Rule 21 **APPEALS TO THE CAREER SERVICE BOARD.**

20-59 Decision of Hearing Officer

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RULE 21
APPEALS TO THE CAREER SERVICE BOARD
(Effective January 10, 2018; Rule Revision Memo 34D)

Purpose Statement:

The purpose of this rule is to provide a fair, efficient, and speedy administrative review of appeals from the Career Service Hearing Office.

Section 21-10 Interlocutory Appeals

An interlocutory appeal is an interim appeal to the Career Service Board while an appeal to the Hearing Office is pending, to decide a particular issue or issues that may substantially affect the final result of the pending appeal before the Hearing Office or that implicates a privilege.

- A. The following rulings by the Hearing Officer may be appealed immediately and reviewed de novo:
 - 1. A ruling regarding subject matter jurisdiction;
 - 2. A ruling directing a party to produce evidence that the party asserts, in good faith, is privileged; or
 - 3. Any other ruling by a Hearing Officer that violates Rule 19 and/or Rule 20.
- B. The appeal before the Hearing Office shall be automatically stayed pending resolution of the interlocutory appeal.
- C. A request for a hearing transcript or notice that no transcript is being requested is required for interlocutory appeals; however, the Career Service Board may render a decision without transcripts or a briefing.
 - 1. If the petitioner has requested a transcript, the petitioner's brief shall be filed with the Board within fourteen (14) calendar days after the date of service by the Hearing Office of notice that the transcript is complete.
 - 2. If no transcript is requested, the petitioner's brief shall be filed with the Board within fourteen (14) calendar days after the date of service by the petitioner of notice that no transcript is being requested from the Hearing Office.
 - 3. The respondent shall file its answer brief within fourteen (14) calendar days after the date of service of the petitioner's brief.
 - 4. No reply briefs are permitted for interlocutory appeals.
- D. The Board may sua sponte deny an interlocutory appeal at any time.

Section 21-20 Petition for Review to the Board of a Hearing Officer's Decision

The Board has the authority to review and decide all petitions and cross-petitions for review permitted under this Rule 21 and shall perform the functions necessary to implement a fair, efficient, and speedy appeal process.

21-21 Grounds for Petition for Review

A party may petition the Board to review a Hearing Officer's decision only on the following grounds:

- A. New evidence: The Board may reverse a decision based on new evidence if the evidence is (1) such that it could not, with reasonable diligence, have been discovered at the time of the hearing; (2) favorable to the party appealing to the Board; (3) pertinent to a determination of at least one issue of the appeal; and (4) of such substance and importance that consideration of the evidence could result in a different outcome of the case.
- B. Erroneous interpretation of applicable authority: The Board may reverse a decision based on an erroneous interpretation of any applicable legal authority. A Hearing Officer's interpretation of applicable legal authority is subject to de novo review.
- C. Policy-setting precedent: The Hearing Officer's decision is of a precedential nature involving policy considerations that may have effect beyond the appeal at hand.
- D. Insufficient evidence: The Hearing Officer's decision is not supported by the evidence. The Board may only reverse a decision on this ground if the Hearing Officer's decision is clearly erroneous; or
- E. Lack of jurisdiction: The Hearing Officer does not have jurisdiction over the appeal. A Hearing Officer's assertion of jurisdiction over an appeal is subject to de novo review.

21-22 Form of Petition for Review

The petition for review shall be in writing, and shall include:

- A. The name and number of the appeal;
- B. The names and addresses of all parties to the appeal and of their attorneys or representatives;
- C. The date of the Hearing Officer's decision;

- D. A brief statement of the grounds for the petition for review from subsection 21-21, including the factual or legal basis which the party asserts exists to support each ground of the petition. If the party is asserting “new evidence,” the party shall state the nature of the new evidence and the reason(s) for its unavailability at hearing. Such statement shall be limited to 20 pages total, typewritten, text double-spaced, Times New Roman 12-point font, using only 8½ x 11-inch paper; and
- E. The action the petitioner wants the Board to take.

21-23 Filing Deadline

The petition for review shall be filed with the Board within fourteen (14) calendar days after the date of the mailing or e-mailing of the Hearing Officer’s decision.

The filing of documents required in connection with a petition for review shall be made by e-mail. The party filing by e-mail shall retain an electronic copy of the e-mail including sender, date, subject, and the address to which the e-mail was sent. Filing and service shall be made to the e-mail address provided:

1. By the opposing party (or the opposing party’s representative).
2. By the Career Service Board on its website.

21-24 Cross-Petition for Review

- A. The other party to the appeal may file a cross-petition for review which shall comply with subsections 21-22 and 21-23, except that it shall be filed within seven (7) calendar days after service of the petition for review.
- B. If a cross-petition for review is not filed, no other response is required until the answer brief is due.
- C. If both parties file a petition for review, the employee shall be deemed the “petitioner” and the department or agency shall be deemed the “cross-petitioner.”

21-25 Stay of Hearing Officer’s Decision

- A. A Motion to Stay the Hearing Officer’s Decision must be filed on or before the deadline for the Petition for Review.
- B. When any petition or cross-petition for review is filed, the Board may stay a Hearing Officer’s decision if the party requesting a stay establishes that substantial harm, injury or loss could occur if a stay is not granted. The other party may file a response within fourteen (14) calendar days or the Board may request a response to a request for stay.
- C. Any stay permitted by this rule shall expire at the time the Board issues a final decision on the petition and cross-petition for review, if any.

21-26 Hearing Transcript and Record

- A. Within twenty-one (21) calendar days after filing the petition for review, the petitioner shall file with the Hearing Office a request for the transcript of the hearing, or such portions of the hearing, if any, that the petitioner deems necessary and relevant for consideration by the Board.
- B. If the petitioner does not request any portion of the transcript, the petitioner shall, within twenty-one (21) calendar days after filing the petition for review, file with the Board and serve on the other party a notice that no transcript is being requested from the Hearing Office.
- C. Within fourteen (14) calendar days after the filing of a request for the transcript of the hearing or the filing of a notice that no transcript is being requested, the respondent (or cross-petitioner) may file a request for the transcript of the hearing, or such additional portions of the transcript not included in the petitioner's request with the Hearing Office.
- D. The cost of preparing the transcript or portions thereof shall be paid by the party making the request.
- E. Once the transcript is prepared, the Hearing Office shall file notice with the Board that the transcript is complete, and shall provide the parties with copies of the notice and copies of the requested transcript, upon payment of reasonable copy costs. The Hearing Office shall include a date of service with its notice.
- F. The parties may review the record at the Hearing Office and request copies of portions of the record necessary for preparation of a brief. The Hearing Office may charge reasonable copy costs.

21-27 Briefs

- A. Petitioner's Brief: The petitioner's opening brief shall be filed with the Board within twenty-one (21) calendar days after the date of service by the Hearing Office of notice that the transcript is complete. The petitioner's brief shall be served on the other party on the same date that it is filed with the Board. If neither party requests a transcript of the hearing, the petitioner's brief shall be filed with the Board within twenty-one (21) calendar days after the date of service by the petitioner of notice that no transcript is being requested from the Hearing Office. The petitioner's brief shall be limited to 20 pages total, typewritten, text double-spaced, Times New Roman 12-point font, using only 8½ x 11-inch paper. The petitioner's brief shall separately address each ground for the petition; shall be supported by appropriate citations to the transcript and the record, if any; and shall include a brief statement of the relief sought by the petitioner.

- B. 1. Answer Brief: An answer brief shall be filed by the other party (“respondent”) with the Board within twenty-one (21) calendar days after the date of service of the petitioner’s brief. The answer brief shall be served on the other party on the same date that it is filed with the Board. The answer brief shall be limited to 20 pages total, typewritten, text double-spaced, Times New Roman 12-point font, using only 8½ x 11-inch paper. The answer brief should contain a response to each argument contained in the petitioner’s brief and, if the answer brief cites to additional portions of the transcript or the record, shall include appropriate citations from the transcript and the record, if any.
2. Cross-Petition for Review Answer Brief: If the respondent has also filed a cross-petition for review, the respondent’s answer brief shall also separately address each ground for the cross-petition; shall be supported by appropriate citations to the transcript and the record, if necessary; and shall include a brief statement of the relief sought by the respondent. The respondent must file its cross-petition for review answer brief with the Board within twenty-one (21) calendar days after the date of service of the petitioner’s brief, with a copy served on the other party on the same date.
- C. Reply Briefs: The parties are expected to fully address all issues in the petitioner’s opening brief, the answer brief, and the cross-petition for review answer brief (if there is a cross-petition for review).
1. If a cross-petition for review is filed and arguments supporting the cross-petition are included in the cross-petition for review answer brief, the petitioner may file a reply brief which shall contain only a response to each argument advanced in support of the cross-petition and contained in the cross-petition for review answer brief. The reply brief to a cross-petition for review answer brief, if any, shall be filed within twenty-one (21) calendar days after the date of service of the cross-petition for review answer brief. Reply briefs under this subparagraph are limited to twenty (20) pages total, typewritten, text double-spaced, Times New Roman 12-point font, using only 8½ x 11-inch paper.
2. If no cross-petition for review is filed, the petitioner may file a reply brief to address arguments raised in the answer brief. The reply brief to an answer brief, if any, shall be filed within seven (7) calendar days after the date of service of the answer brief. Reply briefs under this subparagraph are limited to five (5) pages total, typewritten, text double-spaced, Times New Roman 12-point font, using only 8½ x 11-inch paper.
3. No additional briefs shall be permitted from either party unless requested by the Board.
- D. Extensions of Time to File Brief: If either party needs an extension of time to file a brief, the party may file a motion with the Board supported by good cause. An unopposed motion for an extension shall be deemed granted without further action by the Board. If the motion is opposed, the other party may file an

objection within three (3) calendar days of the motion. The Board will issue an order either granting, denying or modifying the requested extension.

- E. Oral Argument: The Board may order oral argument when it determines oral argument is necessary.

21-28 Late Filings

A party's failure to comply with the filing and service deadlines regarding petitions for review, cross-petitions for review, and briefs may be grounds for dismissal of the party's appeal. The Board may refuse to accept late filings sua sponte or upon motion of the other party.

21-29 Decision by the Board

Upon submission of the briefs and upon the conclusion of oral argument, if any, the Board shall issue a decision in writing, affirming, modifying, or reversing the Hearing Officer's decision. The Board may also remand part or all of the appeal for further action by the Hearing Officer. The Board shall issue its decision within sixty-three (63) calendar days after the date on which the final brief is submitted or oral argument is held, whichever is later. The binding effect of a decision is not affected by late issuance. The decision shall contain findings on each issue necessary to resolve the petition for review and cross-petition for review, if any, and shall be binding upon all parties. A decision of the Board shall be concurred on by at least three (3) members of the Board, whose names shall be included in the decision. The decision rendered by the Board shall constitute the final decision for purpose of requesting judicial review.