

Current Commission Grievance Policy

3-0125 GRIEVANCES 6/2/97

This policy supersedes the previously published policy of the same title and number dated 5/27/94.

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2.21.8010 SHORT TITLE (1) This subchapter may be cited as the grievance policy. (Eff. 12/9/88.)

2.21.8011 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that employees who have attained permanent status may file a grievance as provided in these rules, unless the employee is covered by a grievance procedure provided under a collective bargaining agreement or a statutory grievance procedure.

(2) It is the objective of this policy to provide minimum standards for the procedure to be used to adjust grievances filed by eligible employees.

(3) The department of administration delegates the authority to each executive branch department to adopt an internal grievance procedure. An internal grievance procedure must be consistent with the provisions of this policy and at a minimum include all steps contained in ARM 2.21.8017. Additional steps may be added, forms may be included, and timeframes may be modified at the department's discretion.

(4) An employee shall file a grievance under a procedure adopted by the department, if available. If the department has not adopted a procedure, the employee shall proceed under this policy.

(5) Incidents of sexual harassment must be reported using the procedure in the sexual harassment prevention policy, found at ARM 2.21.1305 (also found at policy 3-0620, Montana operations manual, volume III).

(6) Incidents that are alleged to be in violation of the Americans with Disabilities Act (ADA) of 1990 must be

reported using an ADA complaint resolution procedure if such a procedure has been adopted by a department. Otherwise, the employee shall proceed under this policy.

(7) Nothing in this policy precludes an employee who is alleging unlawful discrimination from concurrently exercising any statutorily-protected right to timely file a complaint with a civil rights enforcement agency.

(8) A job classification appeal must be resolved through the procedure adopted by the board of personnel appeals at ARM 24.26.501 et seq., and may not be filed under any other grievance procedure. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1988 MAR p. 2559, Eff. 12/9/88; AMD, 1991 MAR p. 352, Eff. 3/29/91; AMD, 1994 MAR p. 1421, Eff. 5/27/94; AMD, 1997 MAR p. 1448, Eff. 8/19/97.)

2.21.8012 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Employee" means any state employee except:

(a) those excepted under 2-18-103 and 2-18-104, MCA, from the statewide classification system;

(b) when an employee is covered by a procedure provided in a collective bargaining agreement, or is covered by a statutory grievance procedure;

(c) when an employee has not completed a probationary period or a probationary period is extended and the employee has to attain permanent status;

(d) when an employee is hired as a temporary employee or short-term worker or an employee is temporarily hired into a permanent position for less than 12 months and is not eligible to attain permanent status; and

(e) when persons are contracted as independent contractors or perform their duties under the terms of a personal services contract.

(2) "Grievance" means a complaint or dispute initiated by an employee regarding the application or interpretation of written laws, rules, personnel policies or procedures which adversely affects the employee.

(3) "Grievant" means an employee who has filed a formal grievance.

(4) "Management" means those individuals, beginning with the employee's immediate supervisor, and including other managers in the direct line of authority above the supervisor, who can resolve a grievance.

(5) "Permanent employee" means a permanent employee as defined in 2-18-101, MCA. For purposes of this policy, the term permanent employee includes a seasonal employee.

(6) "Permanent status" means permanent status as defined in 2-18-101, MCA.

(7) "Short-term worker" means a short-term worker as defined in 2-18-101, MCA. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1988 MAR p. 2559, Eff. 12/9/88; AMD, 1997 MAR p. 1448, Eff. 8/19/97.)

2.21.8013 EMPLOYEE GRIEVANCE (1) An employee may file a grievance based on the application or interpretation of laws, written rules, personnel policies and procedures which adversely affects the employee, unless specifically prohibited from doing so by statute or rule.

(2) A grievant shall not use paid working time to prepare and pursue a grievance. A grievant may request to use other appropriate paid leave, accrued compensatory time or leave of absence without pay to prepare a grievance. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and agency policies relating to the type of leave requested. Time spent by the grievant attending a hearing is paid working time only during the grievant's regular work shift and shall not exceed 8 hours per day.

(3) An employee other than the grievant may, at the agency's discretion, be given working time off to participate in an investigation or hearing. This time may be paid working time, if the employee's participation is at the agency's request. Other employees may request to use appropriate paid leave, leave of absence without pay, or accrued compensatory time to attend a hearing. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and agency policies relating to the type of leave requested. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1988 MAR p. 2559, Eff. 12/9/88; AMD, 1997 MAR p. 1448, Eff. 8/19/97.)

Rules 14 through 16 reserved

2.21.8017 GRIEVANCE PROCEDURE (1) Step I is the informal resolution. Both the employee and supervisor are encouraged to resolve the grievance informally whenever possible.

(2) Step II is the formal grievance.

(a) A formal grievance shall be filed in writing within 15 working days from the occurrence of the grievable event. The formal grievance shall be filed with the grievant's immediate supervisor, or the next level above the immediate supervisor. A standard form for filing grievances may be required by an agency.

(b) A formal grievance shall state specifically the law, written rule, policy, and/or procedure violated; when the action occurred, and the remedy desired by the grievant. It shall be signed and dated by the grievant.

(c) Management shall respond in writing to a formal grievance within 10 working days from the date it is filed.

(d) The grievance is resolved at step II if the grievant accepts management's response, or if the grievant fails to advance the grievance to step III within 10 working days of the receipt of management's response.

(3) Step III is the review by a department head.

(a) If a grievant wishes to advance the grievance to step III, the grievant shall notify a management representative designated by the department head. The grievant shall notify the management representative in writing within 10 working days of receipt of management's response at step II.

(b) If the subject of the grievance is suspension without pay for more than 10 working days, disciplinary demotion, or discharge, the designated management representative shall order a hearing, as provided in ARM 2.21.8018. All other grievances shall advance to final review by the department head.

(c) The department head shall review the grievance and shall issue the final administrative decision on the grievance either:

(i) within 20 working days of the grievant's request for final review;

(ii) within 10 working days of receipt of the hearings summary as provided in ARM 2.21.8018; or

(iii) the department head shall notify the grievant and management concerning any additional actions ordered which will delay the decision.

(d) At the discretion of the department head, the final review may include review of the grievance form, review of management's response, and review of the record of any investigation or hearing, or the department head may authorize an additional investigation, may conduct a discussion with the grievant or may order a hearing.

(e) The department head's final decision shall be issued in writing. This is the final step of this grievance procedure. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1988 MAR p. 2559, Eff. 12/9/88; AMD, 1990 MAR p. 377, Eff. 2/23/90; AMD, 1991 MAR p. 352, Eff. 3/29/91; AMD, 1997 MAR p. 268, Eff. 8/4/97.)

2.21.8018 HEARING (1) A hearing shall be conducted at step III, if the grievance is filed as the result of a suspension without pay for more than 10 working days, a disciplinary demotion, or a discharge.

(2) Within 10 working days of advancement of the grievance to step III, the designated management representative shall request either:

(a) a hearings examiner assigned by the office of the attorney general; or

(b) a list of three to five potential hearings examiners from the board of personnel appeals. An examiner shall be selected in one of the following manners:

(i) management and the grievant shall agree on one of the hearings examiners; or

(ii) each shall alternately strike names from the list and the remaining person shall serve as hearings examiner. The grievant shall strike the first name.

(3) The hearings examiner shall set the time and place for the hearing. The parties shall receive notice of the hearing either personally or by certified mail not less than 5 working days before the hearing.

(4) Both parties shall have:

(a) the right to introduce evidence;

(b) the right to cross examine;

(c) the right to be represented; and

(d) the right to a recommendation for resolution based on the recorded evidence and matters officially noticed.

(5) Within 30 working days of the selection of the hearings examiner, the hearings process shall be completed, and the hearings examiner shall submit a written summary of findings and shall make a non-binding recommendation for resolution to the department head.

(6) The agency shall pay all costs of:

(a) a hearings examiner;

(b) physical arrangements for a hearing; and

(c) management's witnesses and evidence.

(7) The grievant shall pay fees and expenses of:

(a) the grievant's representative; and

(b) the grievant's witnesses and evidence, unless the witness also is a management witness.

(8) A recording shall be made of the hearing. Either party may request a transcript of a hearing. The party requesting the transcript shall bear the cost. If both parties request a transcript, they will share the cost.

(9) The department head shall issue the final administrative decision within 10 working days of receipt of the hearing summary. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1988 MAR p. 2559, Eff. 12/9/88; AMD, 1990 MAR p. 377, Eff. 2/23/90; AMD, 1991 MAR p. 352, Eff. 3/29/91; AMD, 1997 MAR p. 1448, Eff. 8/19/97.)

Rules 19 and 20 reserved

2.21.8021 FAILURE TO ACT (1) If the employee fails to respond within the timeframes established for a step, the grievance is considered resolved in favor of the last response given by management. The employee may not refile the grievance.

(2) If management fails to respond within the timeframes established for a step, the grievant may proceed to the next appropriate step of the procedure. (Eff. 12/9/88.)

2.21.8022 WAIVERS (1) Any step of the procedure and timeframes in the procedure may be waived upon written agreement of both parties. (Eff. 12/9/88.)

2.21.8023 GRIEVANCE RESOLVED (1) A grievance is resolved when:

(a) the grievant requests in writing that the grievance be withdrawn or signs a waiver that a resolution has been achieved;

(b) the grievant leaves state employment, unless discharged;

(c) the grievant dies, unless the grievance involves pay or fringe benefits;

(d) the grievant fails to advance the grievance in the required timeframes;

(e) the final steps of the grievance procedures are completed. (Eff. 12/9/88.)

Rules 24 through 29 reserved.

2.21.8030 CLOSING (1) This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable. (Eff. 12/9/88.)

Questions regarding implementation of this policy should be referred to your department's personnel officer. Your personnel officer will contact the state personnel division, department of administration, if additional assistance is needed in interpretation of the policy.

Adopted by State Library Commission October 13, 1999

STEP 3 FORMAL GRIEVANCE

If you do not resolve your grievance at Step 2, you may advance the Grievance to Step 3 by notifying the management representative in your agency who is designated to receive grievances at this step. Contact your agency personnel officer for the name of the designated representative. The notification must be in writing and must be received within 10 working days of receipt of management's response to Step 2.