

**Title 1—OFFICE OF
ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 3—Personnel Selection,
Appointment, Evaluation and
Separation**

1 CSR 20-3.070 Separation, Suspension, and Demotion. The Personnel Advisory Board is amending sections (1), (3), and (4).

PURPOSE: This amendment provides that this rule does not prohibit employing agencies from bargaining over certain employment terms.

(1) Layoffs in the classified service shall be administered by each respective appointing authority based on the needs of the service. **This section does not prevent an employing agency from bargaining over a layoff procedure based on seniority, so long as no terms affect the employing agency's right to terminate at will non-regular employees.**

(3) Suspension. An appointing authority, for disciplinary purposes, may suspend, without pay, any employee in his/her division. A suspension may be made for a length of time as s/he considers appropriate, not exceeding twenty (20) working days in any twelve- (12-) month period except that this limitation shall not apply in the event of a terminal suspension given in conjunction with a dismissal or discharge; a suspension given in connection with a criminal offense involving the use of a controlled substance; or, with the approval of the director, a suspension made pending the investigation or trial of any charges against the employee (see section 36.370, RSMo). Employees enumerated in 1 CSR 20-5.010(1)(C) and (D) and designated as exempt from the overtime requirements of the Fair Labor Standards Act shall not be suspended from duty without pay for disciplinary purposes unless the said suspension is for one (1) or more full workdays.

(A) Any employee covered under section 36.030.1(2), RSMo being suspended shall be furnished with a statement in writing specifically setting forth the reasons for the suspension. A copy of the statement shall be furnished to the director. No suspension of a regular employee for a period longer than five (5) workdays shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the administrative hearing commission, and provides the employee with an opportunity to respond to the reason prior to the effective date. Any regular employee who is suspended for more than five (5) workdays may appeal in writing to the administrative hearing commission within thirty (30) days after the effective date thereof setting forth in substance reasons for claiming the suspension was for political, religious, or racial reasons or not for the good of the service. For the purpose of the appeal process, the effective date of a suspension will be the first day the employee is suspended without pay. There is no appeal from a suspension of five

(5) working days or less. Employees not covered under section 36.030.1(2), RSMo do not have the right to notice or an opportunity to be heard on such suspension.

(B) Any employee covered under section 36.030.1(2), RSMo being suspended for a period of five (5) workdays or less shall be given a statement in writing specifically setting forth the reasons for the suspension. A copy of that statement shall be furnished to the director. No suspension of a regular employee for a period of five (5) days or less shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason and gives the employee an opportunity to respond to the reason. Employees not covered under section 36.030.1(2), RSMo do not have the right to notice, opportunity to be heard, or appeal from a suspension. **This section does not prevent an employing agency from bargaining over for-cause protections for suspensions, so long as no terms affect the employing agency's right to terminate at will non-regular employees.**

(C) An employee who has been convicted of, pleads guilty to, or pleads *nolo contendere* for the first time to any criminal offense involving the use of a controlled substance, and who fails to satisfactorily meet the requirements of education and treatment as defined in section 105.1105, RSMo, shall be suspended for a period of no more than three (3) months. In the case of a suspension under this section of the law, the appointing authority must provide the director and the employee with a statement in writing specifically setting forth the case for suspension and the conditions the employee must meet in order to be returned from suspension.

(D) In the event that an employee's conduct or performance is such that change is required as a condition of employment, an appointing authority may issue to the employee a statement describing the necessity for change, including what needs to be changed and in what time period. A permanent record of the conditional employment period may be established in the employee's service history by notifying the personnel director in a manner prescribed by the director. This action must contain a time period that may not exceed three (3) months.

(E) In the event of an instance of unacceptable conduct by an employee that in the judgment of the appointing authority does not warrant immediate suspension, dismissal or discharge, or demotion, but which requires a permanent record, the appointing authority may record such conduct in the employee's service history by notifying the personnel director in a manner prescribed by the director. Employees do not have the right to notice, opportunity to be heard, or appeal from an unacceptable conduct record.

(4) Demotions. An appointing authority may demote an employee in accordance with the following:

(A) No demotion for cause of a regular employee shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the administrative hearing commission, provides the employee with an opportunity to respond to the reason prior to the effective date, and files a copy of the statement of the reason with the director. Any regular employee who is involuntarily demoted for cause may appeal in writing to the administrative hearing commission within thirty (30) days after the effective date thereof setting forth in substance reasons for claiming that the demotion was for political, religious, or racial reasons or not for the good of the service. Employees not covered under section 36.030.1(2), RSMo do not have the right to notice, opportunity to be heard, or appeal from a demotion and may be demoted for no reason or any reason not prohibited by law. **This section does not prevent an employing agency from bargaining over for-cause protections for demotions, so long as no terms affect the employing agency's right to terminate at will non-regular employees;** and

(B) No demotions for cause shall be made unless the employee to be demoted meets the minimum qualifications for the lower class and shall not be made if any regular employee in the lower class would be laid off by reason of the action.

AUTHORITY: sections 36.025 and 36.070, RSMo Supp. 2018. Original rule filed July 9, 1947, effective July 19, 1947. Amended: Filed Sept. 20, 1947, effective Sept. 30, 1947. Amended: Filed Dec. 23, 1947, effective Jan. 2, 1948. Amended: Filed March 25, 1948, effective April 4, 1948. Amended: Filed Aug. 13, 1949, effective Aug. 23, 1949. Amended: Filed June 1, 1954, effective June 11, 1954. Amended: Filed April 23, 1974, effective May 2, 1974. Amended: Filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed March 14, 1978, effective June 11, 1978. Amended: Filed Dec. 13, 1978, effective April 12, 1979. Emergency amendment filed Sept. 13, 1979, effective Sept. 28, 1979, expired Jan. 25, 1980. Amended: Filed Oct. 12, 1979, effective Jan. 15, 1980. Emergency amendment filed Jan. 15, 1981, effective Jan. 25, 1981, expired May 25, 1981. Amended: Filed Jan. 7, 1981, effective April 12, 1981. Amended: Filed Jan. 11, 1982, effective April 11, 1982. Amended: Filed March 1, 1993, effective Oct. 10, 1993. Amended: Filed Nov. 16, 1993, effective July 30, 1994. Amended: Filed July 21, 1994, effective Feb. 26, 1995. Amended: Filed July 21, 1994, effective Feb. 26, 1995. Amended: Filed June 15, 1995, effective Jan. 30, 1996. Amended: Filed July 9, 1997, effective Jan. 30, 1998. Amended: Filed Sept. 15, 1998, effective March 30, 1999. Amended: Filed Aug. 15, 2003, effective Feb. 29, 2004. Amended: Filed Sept. 15, 2004, effective March 30, 2005. Amended: Filed Aug. 15, 2008, effective Feb. 28, 2009. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expired March 5, 2011. Amended: Filed Aug. 27, 2010, effective Feb. 28, 2011. Emergency amendment filed Aug. 17, 2018, effective Aug. 28, 2018, expired Feb. 28, 2019. Amended: Filed Aug. 31, 2018, effective Feb. 28, 2019. Amended: Filed February 3, 2023.*

**Original authority: 36.025, RSMo 2018 and 36.070, RSMo 1945, amended 1979, 1995, 2018.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Attn: Alyssa Bish, Secretary, 301 W. High St., Room 430, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*