

Emergency Rules

**Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and
Division of Personnel
Chapter 4—Appeals, Investigations, Hearings and
Grievances**

EMERGENCY AMENDMENT

1 CSR 20-4.020 Grievance Procedures. The board is adding a new section (1) and amending existing sections (1)–(3).

PURPOSE: This amendment revises this rule pursuant to changes to Chapter 36, RSMo made by Senate Bill 1007 (2018).

EMERGENCY STATEMENT: This emergency amendment incorporates and implements changes to the law effected by Senate Bill 1007 (2018), effective August 28, 2018. Emergency amendment of this rule is necessary to preserve the compelling governmental interest of successfully implementing the changes to Chapter 36, RSMo made by Senate Bill 1007 (2018) across the departments and agencies of the executive branch of Missouri state government. Provisions of the existing rule are inconsistent with the provisions of Chapter 36, RSMo, effective August 28, 2018, and must be amended to avoid confusion or improper application, avoid potential liabilities, and ensure consistent implementation of Senate Bill 1007 (2018). A proposed amendment which covers the same material will be filed at a later date to be published in the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 17, 2018, becomes effective August 28, 2018, and expires February 28, 2019.

(1) No state agency may establish a grievance procedure permitting a state employee, other than a regular employee, to grieve any discipline, suspension, demotion, notice of unacceptable conduct or conditional employment, leave denial, transfer, shift change, reprimand, or furlough however any of the same may be denominated, imposed by an appointing authority, or any employment action taken by an appointing authority that is alleged to have an adverse financial impact on a state employee or enter into an agreement with a certified bargaining unit providing for the same or any alternative dispute resolution procedure regarding the matters prohibited herein. The foregoing prohibitions shall not apply to grievance procedures alleging that one (1) of the foregoing types of employment actions was taken for a reason prohibited by law.

[(1)](2) Grievance Procedure Established. The settlement of differences within the classified service between management and employees shall be provided through the establishment of an orderly grievance procedure *[in] for each [division of service subject to the State Personnel Law] position covered under section 36.030.1(2), RSMo.*

(A) The established grievance procedure in any division of service shall apply to employment conditions and related matters over which the appointing authority has complete or partial jurisdiction and for which redress is not provided by the personnel law, rules, or procedures.

(B) Notwithstanding subsection (A) of this section, an agency may enter into an agreement with a certified bargaining representative that allows for an alternative dispute resolution procedure that a represented employee may elect in lieu of the agency's established grievance procedures or the employee's right to appeal to the Administra-

tive Hearing Commission as provided by the personnel law, rules, or procedures.

(C) Unless an agency has entered into an agreement with a certified bargaining representative that provides otherwise, the grievance procedure shall not apply in instances where the grievance involves personnel transactions or administrative decisions of the appointing authority for which the personnel law or rules provide a specific appeal to the Administrative Hearing Commission. Because the director of the Division of Personnel is not subject to an established grievance procedure, neither a grievance procedure nor alternative dispute resolution procedure may include provisions for grieving decisions made by the director under authority granted by the personnel law or regulations.

(D) The responsibility and authority of appointing authorities to create, promulgate, and enforce operational policies for the efficient and effective operation of the divisions of service is not altered by the ability of employees to use the grievance process to question the application of these policies or to seek clarifications or modifications of them.

[(2)](3) Objectives of Grievance Settlements. To every extent possible, the grievance procedure shall be designed to—

(A) Resolve the grievance quickly;

(B) Settle the disagreement informally at the employee-supervisor level, when possible;

(C) Correct, if possible, the cause of the grievance to prevent future similar complaints; and

(D) *[Assure] Promote* fair and equitable treatment of *[all]* employees and to promote harmonious relations generally among employees, supervisors, and administrative staff.

[(3)](4) Management Responsibility. *[Each appointing authority shall prepare and submit to the personnel director for review, for the purpose of ascertaining conformance with this rule, formal written procedures for submission of grievances by employees and for prompt and orderly consideration and determination of the grievances by supervisors and administrators. The appointing authority shall be responsible for carrying out the provisions of the grievance procedure.]*

(A) Unless an agency has entered into an agreement with a certified bargaining representative that provides for an alternative method of resolving grievances which includes subjects for which redress is provided by the personnel law, rules, or procedures, the grievance procedures of each division of service shall distinguish between issues subject to review through personnel law, rules, or procedures and other matters subject to the grievance procedure. If there are separate procedures for filing internal complaints of discrimination, sexual harassment, retaliation for grievances, or other matters, these shall also be identified.

(B) The grievance procedure shall include the following minimum provisions:

1. Except where the agency has a separate procedure as stated in subsection (3)(A), or unless the agency has entered into an agreement with a certified bargaining unit representative that provides otherwise, the procedure shall begin with the immediate supervisor and, if not resolved to the satisfaction of the grievant at the beginning or succeeding steps, shall end with the appointing authority;

2. The procedure shall require that the grievance and responses be in written form beginning at the first step, unless agreed to by both parties. A copy of all written responses will be delivered to the grievant. A copy of all written grievances and responses will be filed with the appointing authority or his/her designated representative;

3. The procedure shall include specific time frames for filing and responding to grievances at each step. The procedure may include a method of extending time frames initiated by the grievant or management, or both;

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4. The procedure shall include a provision prohibiting retaliation or harassment for filing a grievance and for investigating charges of alleged retaliation or harassment. Each agency must give employees alleging retaliation for grievances an opportunity to address this allegation to a higher level than the alleged incident;

5. The procedure shall permit group as well as individual grievances;

6. The procedure shall allow the grievant reasonable time off from duty for attendance at formal grievance hearings; and

7. The procedure shall include a method for informing all employees of the existence of the grievance procedure and for providing a copy of the grievance procedure and appropriate forms to employees desiring to file a grievance.

*AUTHORITY: sections 36.025 and 36.070, RSMo [2000] Supp. 2018. Original rule filed Dec. 8, 1975, effective Dec. 19, 1975. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Aug. 17, 2018, effective Aug. 28, 2018, expires Feb. 28, 2019. An emergency amendment covering this same material will be published in the October 1, 2018, issue of the **Missouri Register**. A proposed amendment covering this same material will be filed at a later date to be published in the **Missouri Register**.*