

# State Human Resources Policy #E24-109.01

## Employee Grievance Procedure

**THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

### **DEFINITIONS**

Agency – The South Carolina Military Department/Office of the Adjutant General

Covered Employee - A Full-Time or Part-Time employee who is occupying a part or all of an established Full-Time Equivalent (FTE) position who has completed the Probationary Period, and has a “Successful” or higher overall rating on the employee’s Employee Performance Evaluation, and who has grievance rights.

Non-Covered Employee - Probationary employee, temporary employee, temporary grant employee, time limited employee, and other employees exempt from the State Employee Grievance Procedure Act.

### **POLICY**

1. The South Carolina Military Department has established an Employee Grievance Policy for the Agency’s Covered Employees. This policy does not apply to Non-Covered employees.

2. Actions Which Qualify as the Basis for a Grievance or Appeal

- Terminations
- Suspensions
- Involuntary reassignments in excess of thirty (30) miles from the prior workstation
- Demotions
- Punitive reclassifications when the Agency (in the case of a grievance) or the Department of Administration’s State Human Resources Director (in the case of an appeal) determines there is a material issue of fact that the actions were solely done to penalize the covered employee.
- Promotions in instances where the Agency or, in the case of appeals, the Department of Administration’s State Human Resources Director determines there is a material issue of fact as to whether or not an agency has considered a qualified Covered Employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity.
- Salary decreases based on performance as the result of an Employee Performance Evaluation System (EPES) evaluation
- Reductions in Force only if the Agency or, as an appeal, if the Department of Administration’s State Human Resources Director determines there is a material issue of fact that the Agency inconsistently or improperly applied its reduction in force policy or plan.

3. Actions Which Do Not Qualify as the Basis for a Grievance or Appeal

- Reclassifications, reassignments, and transfers within the same State salary range

- For any other qualified Covered Employee, an Agency promotion of an employee one (1) organizational level above the promoted employee's former level
  - Failure to be selected for a promotion
4. Failure by the Covered Employee to comply with the internal time periods in the Agency's Grievance Procedure constitutes a failure to exhaust administrative remedies and waives the Covered Employee's right to further continue the grievance.
- a. The internal time periods of the Agency's Grievance Procedure may be waived by mutual written agreement of both parties.
- b. The 45-calendar day period by the Agency may be waived by mutual written agreement of both parties.
- c. The time periods related to filing an appeal with the Department of Administration's State Human Resources Director may not be waived.
5. The State Employee Grievance Procedure Act provides that a Covered Employee has the right during the grievance and appeal process to a representative, which may include legal counsel. If the Covered Employee chooses to exercise the right of legal counsel, it shall be at the Covered Employee's expense.
6. Prior to filing a formal grievance, the Covered Employee should attempt to resolve the matter informally with their immediate supervisor. The Covered Employee may present this matter verbally or in writing. However, this is merely an informal attempt to resolve the matter and cannot be substituted for the requirements of the Grievance Procedure.
7. Employees who choose to file a grievance or appeal will not be disciplined or otherwise prejudiced for exercising their rights or testifying under the provisions of this Policy.
8. The South Carolina Military Department's State Human Resources Officer (State HRO) will post this policy in such a manner as it is available to all State employees, provide a copy of this procedure to all State employees as a part of their in-processing, or provide a copy of this procedure as requested.

## **PROCEDURE**

### 1. Step 1

a. If the matter was not resolved informally with the Covered Employee's immediate supervisor, the Covered Employee must notify the State HRO to initiate a formal grievance.

(1) The grievance must be in writing and must be received (or, if mailed, postmarked) within 14 calendar days of the effective date of the action or 14 calendar days from when the employee is notified of the action, whichever is later. The employee should include a written summary of the facts of the grievance and the relief sought.

b. The State HRO or designated official shall initially review the grievance to determine whether the matter involves a grievance as defined by the State Employee Grievance Procedure Act. The State HRO or designated official may conduct appropriate investigations and fact-findings as the investigating officer may consider necessary to make the determination.

(1) If the State HRO or designated official determines that the matter is not grievable, the Adjutant General or his designee will advise the Covered Employee in writing normally within five (5) calendar days of receipt of the grievance.

(a) Such determinations shall be the Agency's final decision.

(b) The Covered Employee may appeal the determination to the Department of Administration's State Human Resources Director.

(2) If the State HRO or designated official determines the matter is grievable, the State HRO or designated official will contact the Covered Employee and the appropriate agency representative(s), normally with five (5) calendar days of receipt of the grievance, to inform them the issue can be heard under this grievance procedure and inquire whether or not they desire to participate in voluntary mediation.

(a) Both parties must make a written decision to the State HRO within two (2) calendar days of this notification. Failure by either party to respond timely to this notification is deemed a refusal to participate in the voluntary mediation.

(b) Any initial determination by the State HRO or other designated official that the matter may be grieved shall only entitle the Covered Employee to have the matter considered in accordance with this grievance procedure and shall in no way be construed to be an adjudication of the merits of the grievance.

c. With Mediation

(1) When the Covered Employee and the agency representative(s) both agree in writing to participate in voluntary mediation, the State HRO or other designated official will schedule a mediation conference to occur within five (5) calendar days and make the necessary arrangements for acquiring a mediator.

(2) The mediator will serve as an impartial third party who will encourage and facilitate a resolution to the dispute without advising what the result should be.

(3) The mediation conference(s) will be confidential and limited to the parties and their representatives. Other persons may attend with the permission of the mediator and the other party.

(4) The mediator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation conference in an adversary proceeding or judicial forum.

(5) If the parties agree to settle the matter, the mediator will assist in drafting a mediation agreement with the Agency's designated officials who will need to finalize and assist in implementing the agreement. The mediator may share terms of the settlement agreement with the Agency's designated officials who need to finalize and assist in implementing the agreement.

(6) If the matter is not settled within eight (8) calendar days of the initial mediation conference, the mediator will inform the State HRO or other designated official that settlement has not occurred.

(a) The State HRO or other designated official will schedule a conference to occur between the Covered Employee's next level supervisor and the Covered Employee within five (5) calendar days.

(b) At the conference with the Covered Employee's next level supervisor, the Covered Employee will have an opportunity to present their position regarding the grievance.

(c) The next level supervisor may conduct appropriate investigations and fact finding to determine whether to accept, reject, or modify the disciplinary action taken against the Covered Employee. The next level supervisor will advise the Covered Employee of the decision in writing with five (5) calendar days of the conference.

d. Without Mediation

(1) If the matter is grievable and the Covered Employee or the Agency submits a written decision not to participate or fails to respond timely concerning voluntary mediation, the State HRO or other designated official will promptly schedule a conference to occur between the Covered Employee's next level supervisor and the Covered Employee, normally within five (5) calendar days.

(2) At the conference with the Covered Employee's next level supervisor, the Covered Employee will have an opportunity to present their position regarding the grievance.

(3) The next level supervisor may conduct appropriate investigations and fact finding to determine whether to accept, reject, or modify the disciplinary action taken against the Covered Employee. The next level supervisor will advise the Covered Employee of the decision in writing with five (5) calendar days of the conference.

2. Step 2

a. To continue the grievance, the Covered Employee must notify the Adjutant General or his designee in writing. The request to continue the grievance must be received (or, if mailed, postmarked) within five (5) calendar days after receiving the Step One decision.

b. The Adjutant General or his designee must promptly schedule and conduct a conference with the Covered Employee, normally with five (5) calendar days. The Covered Employee will have an opportunity at this time to present their position regarding the grievance.

c. The Adjutant General or his designee may conduct appropriate investigations and fact-finding to determine whether to accept, reject, or modify the disciplinary action taken against the Covered Employee.

d. The Adjutant General or their designee must advise the Covered Employee of the decision in writing within five (5) calendar days of the conference. This decision will be final within the Agency.

3. Appeals to The State Human Resources Director

a. The State Employee Grievance Procedure Act provides for an appeal of a grievance beyond the Agency to the Department of Administration's State Human Resources Director after all administrative remedies to secure relief within the Agency have been exhausted. A Covered Employee has not exhausted administrative remedies to secure relief within the Agency until the Agency's internal grievance process is completed or the 45 calendar days provided for the Agency to issue a decision has elapsed, whichever occurs sooner.

b. Any Covered Employee may appeal the decision of the Adjutant General or his designee. Such appeal must be in writing and submitted to the Department of Administration's State Human Resources Director within ten (10) calendar days of receipt of the Agency's final decision or 55 calendar days from the date of the initial filing of the grievance with the Agency, whichever is later.

c. The State Employee Grievance Procedure Act provides that a Covered Employee may appeal directly to the Department of Administration's State Human Resources Director in the event the Agency does not complete its entire internal grievance procedure within 45 calendar days from the time the grievance is initially filed with the agency.

(1) Failure by the agency to issue a final decision within this 45 calendar day period allows the Covered Employee to proceed with an appeal to the Department of Administration's State Human Resources Director after 45 calendar days, but no later than 55 calendar days from the initial date the grievance was filed within the agency.

(2) Failure by the Covered Employee to file an appeal within the time periods referenced in this paragraph shall constitute a waiver of the right to appeal.

d. The time periods related to filing an appeal with the State Human Resources Director may not be waived.