

The purpose of the State Personnel Board Rules and Director's Administrative Procedures is to establish a comprehensive system of rules and procedures for employees within the state personnel system. In order to distinguish them from Director's procedures, rules promulgated by the State Personnel Board are noted as "Board Rules". Rules adopted by the Board and procedures adopted by the Director require the formal rulemaking process defined in the Administrative Procedures Act.

## Preamble

Unless otherwise noted in a specific provision, the entire body of State Personnel Board Rules were repealed and new permanent rules were adopted by the State Personnel Board on April 19, 2005, pursuant to a Statement of Basis and Purpose dated April 19, 2005. The entire body of the State Personnel Director's Administrative Procedures were repealed and new permanent procedures were adopted by the State Personnel Director on May 5, 2005, pursuant to a Statement of Basis and Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005.

This version reflects rulemaking by the State Personnel Director as follows: To modify Procedures 3-9 C., 3-26, 3-27, 3-27 B., 3-42, 5-10, 5-17, and add procedures 3-26A., and repeal 9-7 effective November 1, 2019. 2-10, 3-6, 3-7, 3-8, 3-9, 3-11, 3-14, 3-18, 3-19, 3-32, 3-33, 3-43, 3-44, 3-45, 3-50, 3-52, 7-6, 7-11, 7-14 and to repeal Procedures 3-47 and 3-53 effective January 1, 2018.

~~This version reflects rulemaking by the State Personnel Board to adopt, as amended, Board Rules in Chapter 8, as follows: Board Rules 8-2, 8-3, 8-3(A), 8-4, 8-8(A)(1), 8-8(A)(2)(c), 8-8(B)(1), 8-8(B)(2), 8-8(C), 8-8(D), 8-12, 8-14, 8-15, 8-17, 8-18, 8-19(A), 8-20, 8-25, 8-26, 8-26(B), 8-30, 8-31, 8-32, 8-32(A), 8-34, 8-34(A), 8-35, 8-36, 8-36(A through D), 8-38, 8-38(A), 8-38(B), 8-39, 8-40, 8-41, 8-41(A), 8-41(B), 8-45, 8-45(A)(3), 8-45(A)(4), 8-45(B)(3), 8-45(B)(4), 8-45(C), 8-45(D), 8-45(E), 8-45(F), 8-45(G), 8-45(H), 8-46(B), 8-46(C), 8-47, 8-48, 8-50, 8-51, 8-51(A through E), 8-52(A through E), 8-53(B)(1,2,4), 8-54(A through I) 8-55, 8-56, 8-57, 8-58, 8-59, 8-60, 8-61, 8-62, 8-64, 8-67, 8-68, 8-69, effective January 14, 2018.~~

## **Chapter 3 - Compensation**

Authority for rules promulgated in this chapter is found in one or more of the following: the State of Colorado Constitution Article XII, Section 13, State of Colorado Revised Statutes (C.R.S.) §24-50-104 (1)(a), (b), (c), (e), (f), (4), (5), (6), (9), and 24-50-104.5(1), 109.5, 136, 137, and 208, C.R.S. Board rules are identified by cites beginning with "Board Rule".

### **General Principles**

- 3-1. The Department of Personnel shall establish rules governing compensation for the state personnel system. Compensation practices shall provide for equitable treatment of similarly situated employees.
- 3-2. Pay grades shall reflect prevailing labor market compensation and any other pertinent considerations. No individual employee's base pay shall be less than the minimum of the grade or exceed a statutory lid. In the case of disciplinary action, base pay may be less than the minimum of the grade for a period not to exceed 12 months, subject to FLSA requirements.

### **Annual Compensation Survey**

- 3-3. The Department of Personnel shall conduct the annual compensation survey. The Director shall establish and publish the distribution of annual compensation changes among salaries, including establishment of statewide priority groups and group benefit contributions, which shall be effective as provided by law. (9/1/12)
- 3-4. When upward pay grade changes are implemented, the grade minimum and maximum shall be adjusted and no employee shall be paid outside of the new grade, except in disciplinary actions resulting in salary temporarily below the new minimum and continuation of saved pay above the new maximum. (7/1/07)
- 3-5. If pay grade changes are downward, employees' base pay shall remain unchanged, subject to the statutory three-year limitation on saved pay.

### **Pay Rates**

- 3-6. The Department of Personnel shall publish the annual pay plan. Departments shall use an hourly rate based on an annual salary to compensate employees who do not work a predetermined or full schedule. (1/1/18)
- 3-7. Saved pay applies to downward movements due to individual allocation, system maintenance studies, and the annual compensation survey to maintain an employee's current base pay when it falls above the new grade maximum. It may also apply when retention rights are exercised pursuant to the "Separation" chapter. In no case shall the employee's base pay remain above the grade maximum after three years from the action, even if it results in a loss in pay. (1/1/18)
- 3-8. Unless authorized by the Director, the rate resulting from multiple actions effective on the same date shall be computed in the following order. The Director may withhold salary adjustments for any employee with a final overall rating of needs improvement, except as provided in 3-4. (7/1/07)
  1. System maintenance studies.

2. Upward, downward, or lateral movements.
  3. Repealed. (8/1/08)
  4. Changes in pay grade minimums and maximums to implement approved annual compensation changes to the pay structure.
  5. Across-the-board increases authorized by the General Assembly. (1/1/18)
  6. Adjustments to the base pay of employees due to merit pay in approved annual compensation changes, subject to the new grade maximum and 3-19(C)(1)(a). (1/1/18)
  7. Bring salaries to the new grade minimum as a result of compensation survey pay grade changes, except in disciplinary actions. (1/1/18)
  8. Non-base merit payments (based on new annual salary). (1/1/18)
- 3-9. The appointing authority shall determine the hiring salary within the pay grade for a new employee, including one returning after resignation, which is typically the grade minimum unless recruitment difficulty or other unusual conditions exist. (7/1/06)
- A. Recruitment difficulty means difficulty in obtaining qualified applicants or an inadequate number of candidates to promote competition despite recruitment efforts.
  - B. Unusual conditions exist when the position requires experience and competencies beyond the entry level or the best candidate cannot be obtained by hiring at the minimum of the pay grade. (1/1/18)
  - C. The appointing authority's determination shall consider such factors as, but not limited to, labor market supply, recruitment efforts, nature of the assignment and required competencies, qualifications and salary ~~requirements-expectations~~ of the best candidate, salaries of current and recently hired employees in similar positions in the department, available funds and the long-term impact on personal services budgets of hiring above the minimum of the pay grade.
- 3-10. In the case of fiscal emergency or other budget reasons, an employee may agree to voluntarily reduce current base pay, which shall be approved in writing by the appointing authority and employee. If funds become available at a later date, the department may restore base pay to any rate up to, and including, the former base pay. This policy shall not be used to substitute for other provisions in this chapter.
- 3-11. When an unclassified position is brought into the state personnel system, the base pay for an employee appointed to the position shall be computed in accordance with the Department of Personnel's directives that shall ensure that total compensation is preserved to the greatest extent possible, except that base pay shall not exceed the grade maximum. (1/1/18)

## Downward Adjustments

- 3-12. Downward movement is a change to a different class with a lower range maximum (e.g., non-disciplinary or disciplinary demotions, individual allocations, system maintenance studies including class placement, or the annual compensation survey).
- 3-13. In the case of system maintenance studies and individual allocations of positions, the employee's base pay shall remain the same, including saved pay.
- A. A department head has sole discretion to grant saved pay when employees exercise retention rights and the decision must be applied consistently throughout the retention area. If saved pay is granted, the employee's name shall not be placed on a reemployment list. (7/1/07)
- 3-14. In the case of other downward movements, the base pay shall not be above the maximum in the new grade.
- A. Upon reversion of a trial service employee to the previously certified class, base pay shall be the amount the employee would be making had the promotion or reinstatement not occurred. (1/1/14)

## Upward Adjustments

- 3-15. Upward movement is a change to a different class with a higher range maximum (e.g., promotions, individual allocations, system maintenance studies including class placement, or the annual compensation survey).
- 3-16. In the case of system maintenance studies, employees' base pay shall remain the same. If the Director finds that severe and immediate recruitment and retention problems make it imperative to increase pay to maintain critical services, the Director may order that base pay be increased up to the percentage increase for the new class.
- 3-17. In the case of other upward movements, the employee's base pay may increase or remain the same, in which case the employee would receive the economic opportunity by moving to the new grade. In no case shall the new base rate be lower than the minimum, except in disciplinary actions, or higher than the maximum of the new grade. Continuation of a salary increase is subject to satisfactory completion of the trial service period.
- A. When conditional employees move upward, the base pay shall be computed based on the certified class.

## Lateral Adjustments

- 3-18. Lateral movement is a change to a different class or position with the same range maximum (e.g., transfers, individual allocations, system maintenance studies including class placement), or an in-range salary movement in the same class and position. Base pay can be offered at a rate that falls within the pay range of the class and does not exceed the grade maximum. In addition, in-range salary movements are subject to the provisions below. (1/1/14)

In-Range Salary Movements. A department may use these discretionary movements to increase base salaries of permanent employees who remain in their current classes and positions when there is a critical need not addressed by any other pay mechanism. The use of in-range salary movements is not guaranteed and shall be funded within existing budgets. These movements

shall not be retroactive and unless specifically noted in these rules, frequency is limited to one in-range salary movement in a 12-month period. No aspect of granting these movements is subject to grievance or appeal, except for alleged discrimination; however, an alleged violation of the department's plan can be disputed. A department's decision in the dispute is final and no further recourse is available. Once granted, a reduction in base salary is subject to appeal. Departments must develop a written plan addressing appropriate criteria for the use of any movement based on sound business practice and needs, e.g., eligibility, funding sources, approval requirements, measures to ensure consistent use. The plan must be communicated within the department and a copy provided to the Director prior to implementation. If granted, there must be an individual written agreement between the employee and the appointing authority that stipulates the terms and conditions of the movement. Records of any aspect of these movements shall be provided to the Director when requested. (02/2017)

- A. **Salary Range Compression.** Used as a salary leveling increase where longer-term or more experienced employees are paid lower in the range for the class than new hires or less experienced employees over a period of time resulting in documented retention difficulties. Thus, there is a valid need to increase one or more employee's base salary in the class to recognize contributions equal to or greater than the newly hired or less experienced employees. Justification shall be required based on facts. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum permitted by the department's policy on hiring salaries, whichever is greater, and subject to the pay grade maximum. (9/1/12)
- B. **Counteroffer.** Used when an employee with critical, strategic skills receives a higher salary offer from another department or outside employer and the appointing authority needs to increase the employee's base salary for retention purposes. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. Written confirmation of the other entity's salary offer is required. The increase may be up to 10 percent or the maximum permitted by the department's policy on promotional pay, whichever is greater, and subject to the pay grade maximum.
- C. **Delayed Transfer or Promotional Pay Increase.** Used when a transfer or promotion is made with no salary increase or partial salary increase because performance expectations are unproven and/or funds may be unavailable at the time of transfer or promotion. This is a one-time base salary increase within 12 months of the date of transfer or promotion when funds become available and the employee's contributions are fulfilled. The intent to provide a later salary increase must be documented at the time of the transfer or promotion. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum amount permitted in the department's policy on transfer or promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase. (1/1/18)
- D. **New Hires.** Used at the time an employee is hired when performance expectations are unproven and/or funds may be unavailable. This is a one-time base salary increase within 12 months of hire. The intent to provide a later salary increase must be documented at the time of hire. To be eligible, early satisfactory completion of specified training objectives must be documented. This is limited to a one-time increase up to 10 percent or the maximum permitted by the department's policy on promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase. (02/2017)

- E. Competency-Based Increase. Used when an employee applies the complete set, or a subset, of competencies required to successfully perform the work of a specific position. Required competencies must be specifically defined with deadlines and evaluation criteria for achievement, and must be communicated in writing to the employee prior to granting an increase. Competencies that are the basis for this increase must be required to perform permanent, essential functions assigned to the position. The intent of this increase is to promote career development by aligning pay increases with achieving all required competencies to fully perform the job. Increases are limited to no more than two per 12-month period. This type of increase shall not be applied as a substitute for Merit Pay. To be eligible, an employee must demonstrate required competencies as evidenced by a written evaluation by the appointing authority. The increase may be up to 10 percent or the maximum permitted by the department's policy, whichever is greater, and subject to the pay grade maximum. (02/2017)

### **Merit Pay (9/1/12)**

- 3-19. Merit pay consists of both base and non-base building adjustments. Any permanent employee is eligible for merit pay, except as provided below and as otherwise provided in this chapter. Prior to the payment of merit pay, the Director shall specify and publish the percentage for any merit pay increase for applicable priority groups. Adjustments are effective on July 1. The employee must be employed on July 1 to receive payment. The employee's current department as of July 1 is responsible for payment, unless arrangements are made whereas the transferring department will provide full payment of a portion of any non-base building merit pay increase. (1/1/18)
  - A. If the final overall rating is needs improvement, the employee is ineligible for any merit pay. Merit pay shall not be denied because of a corrective or disciplinary action issued for an incident after the close of the previous performance cycle. (9/1/12)
  - B. Employees hired into the state personnel system during the performance evaluation cycle shall receive a prorated portion of any base or non-base building merit pay. The proration shall be based on the number of calendar months worked. (1/1/18)
  - C. Base building merit pay shall be based on final performance evaluation and salary position within the pay range on June 1. (1/1/18)
    - 1. Payment of base building merit pay shall not cause an employee's base pay to exceed the grade maximum, and is paid as regular salary. (9/1/12)
      - a. The payment of any remaining portion of base building merit pay that would cause base pay to exceed grade maximum shall be paid as a onetime, non-base building lump sum in the July payroll. The statutory salary lid does not apply to such a payment. (1/1/14)
    - 2. Payment of base building market pay shall be a comparison of state personnel system salaries to market salaries for the purpose of measuring competitiveness. Market shall result in base building increases to pay, only when an employee's salary is below a newly adjusted pay range minimum. (9/1/12)
  - D. Non-base building merit pay shall be a non-base building or one-time lump sum payment and shall be calculated after any annual compensation adjustments, including base building merit pay. (1/1/18)

1. Non-base building merit pay must be earned each year and shall be paid as a one-time lump sum in the July payroll. The grade maximum and statutory lid do not apply to non-base building merit pay. (9/1/12)
  - a. An employee must be employed on the date of the payment in order to be eligible to receive a non-base building merit payment. (9/1/12)
- E. Base building or non-base building merit pay may be provided to employees, at a department's discretion if approved by the Governor's Office of State Planning and Budgeting, when funded from a department's state employee reserve fund using department reversions. These discretionary merit payments shall only be paid to certified employees, in order of priority grouping established by the Director. (1/1/18)
  1. Base building merit pay increases funded from a department's state employee reserve fund shall be provided only if the department can justify sustainability as determined by the Governor's Office of State Planning and Budgeting. (9/1/12)
  2. Merit pay increases funded from a department's state employee reserve fund shall not be provided more than once in a 12-month period per employee. 9/1/12)
  3. Repealed. (1/1/18)
- F. Repealed. (1/1/18)

## **Incentives**

- 3-20. Departments are strongly encouraged to use incentives. (7/1/06)
- 3-21. An appointing authority may grant an immediate non-base cash or non-cash incentive award to an employee in recognition of special accomplishments or contributions throughout the year or to augment merit pay, e.g., on-the-spot cash awards, work-life options, or administrative leave, in accordance with a department's established incentive plan. Other than augmenting merit pay, incentives shall not be used to supplement or substitute for annual compensation adjustments or other base pay movements. The statutory salary lid does not apply to these incentives. (9/1/12)
  - A. Departments must have an incentive plan prior to the use of incentives. Such plans shall include eligibility criteria, the types of incentives allowed, cash amounts or limits and payment methods, and a communication plan. Such plans shall be developed with the input of employees and managers.
    1. If a department uses a type of incentive that shares cost savings from innovations, the following applies.
      - a. Employees are ineligible if they are wholly responsible for control and operation of a division (or equivalent), the primary assignment includes responsibility for identifying efficiencies and cost reductions, or the position has statewide program or budget authority.
      - b. Savings are the result of innovative ideas that increase productivity and service levels while decreasing costs. Savings are not the result of normal progressive business evolution, obvious solutions to mandated

budget cuts, cost avoidance or revenue enhancement, nor do they have adverse cost impact on other departments.

- c. Savings are the difference between anticipated expenditures prior to implementation and actual expenditures following implementation for a full 12-month period. The complete award amount shall be no more than 10 percent of the first year's savings, not to exceed a total of \$1,000 per employee.

3-22. Repealed. (8/1/08)

3-23. Repealed. (8/1/08)

### Medical Plan

3-24. Employees in the medical pay plan shall be compensated based solely on performance as established in the required annual contract to be negotiated by July 1 of the contract year, or within 30 days of hire or movement within the medical pay plan for the remainder of the contract year. Employees are not eligible for any pay adjustments, such as merit pay. Current performance contracts may be modified during the contract year but not compensation. Change in compensation shall only occur at the end of a contract period, unless an employee moves to another position, and may increase, decrease, or remain unchanged from the previous year. In the case of upward or downward movement in the medical pay plan, compensation must be no lower than the minimum or higher than the maximum rates of the new grade and a new contract must be negotiated for the remainder of the contract year. (9/1/12)

- A. If no contract is negotiated, the existing contract continues and base pay stays the same until a new contract is negotiated. Employees in the medical pay plan may grieve the rate unless it is lower, which is then subject to appeal. If the employee moves into or out of the medical pay plan into another open-range class, the base pay shall be negotiated subject to the grade maximum of the new class.

### FLSA and Overtime

3-25. All employees are covered by the Fair Labor Standards Act (FLSA). Under FLSA, the state is considered to be a single employer. Employees cannot waive their rights under FLSA.

3-26. All full-time employees work a minimum of 40 hours during a standard FLSA workweek of Saturday at 12:00am through Friday at 11:59pm. ~~(168 consecutive hours in seven consecutive days). Appointing authorities may adopt different work periods for law enforcement and health care employees as permitted by federal law. (8/1/08) 3-27. Overtime is the time a non-exempt employee works in excess of the 40 hours during a standard workweek or in excess of established work hours in adopted work periods for law enforcement and health care employees. Such excess hours are paid at 1 1/2 times the employee's regular hourly base pay rate, including applicable premium pay. Monetary payment must be made by the next regularly scheduled payday following the pay period in which it was worked. (8/1/08) (11/1/2019)~~

- A) For law enforcement, healthcare and fire protection employees, appointing authorities may adopt a "work period" under the FLSA between 7 consecutive days to 28 consecutive days in length. Overtime compensation is not required until the employee satisfies the maximum hour standard under the federal regulations.

3-27. Overtime is the ~~time~~ actual hours worked by a non-exempt employee ~~works~~ in excess of the 40 hours during a standard FLSA workweek or in excess of established work hours in adopted work



periods for law enforcement, health care and fire protection employees. Such excess hours are paid at 1 1/2 times the employee's regular hourly base pay rate, including applicable premium pay. Monetary payment must be made by the next regularly scheduled payday following the pay period in which it was worked. Non-exempt employees paid on a biweekly or monthly pay cycle must be paid overtime on the employee's next regularly scheduled payroll following the period the overtime was earned. Biweekly employees must be paid on the biweekly payroll and monthly employees must be paid on the monthly payroll. (8/4/08) (11/1/2019)

- A. Overtime for non-exempt employees shall be approved in accordance with a department's procedure. A department head shall establish a policy to address unauthorized overtime work; however, prohibition of unauthorized overtime does not avoid the requirement to pay if it is actually worked.
  
- B. Compensatory time in lieu of monetary payment is allowed if there is a written agreement between the department and any employee hired after April 15, 1986. Written agreements for those hired prior to April 15, 1986, are unnecessary provided that the department had a regular practice in place for granting compensatory time. Acceptance of compensatory time may be a condition of employment for new employees. Appointing authorities must ensure that compensatory time is scheduled as soon as practical. Compensatory time shall not exceed 240 hours (or 480 hours for law enforcement or fire protection) and any additional overtime must be paid at the next regular pay period. Non-exempt employees paid on a biweekly or monthly pay cycle must be paid overtime on the employee's next regularly scheduled payroll following the period the overtime was earned. Biweekly employees must be paid on the biweekly payroll and monthly employee must be paid on the monthly payroll. If a department wants to place limits on the accrual or payment of compensatory time, a policy must be developed and communicated prior to use and on an ongoing basis. Unused compensatory time at termination or transfer to another department must be paid at that time.

### Eligibility

- 3-28. Department heads are responsible for determining if each position is exempt or non-exempt based on the actual duties performed regardless of class. Determinations must be entered into the payroll system and a record kept on file.
  
- 3-29. An exempt employee's pay is not subject to reduction except as follows. Deductions in increments of one day are allowed for a major workplace rule violation. Deductions are allowed for any amount of time if a leave of absence was not requested or was denied and accrued leave is not used; or is covered by the Family and Medical Leave Act (FMLA); or accrued leave is exhausted; or for voluntary furlough. In the case of mandatory furloughs for budgetary reasons, exempt status is not changed, except for the workweek in which the furlough occurs and pay is reduced. Improper reductions make the employee non-exempt. (7/1/06)
  
- 3-30. Exempt employees shall not be granted extra pay for hours worked in excess of 40 hours in a workweek. An appointing authority may grant discretionary administrative leave or other incentives but such awards shall not be tied to hours worked. (7/1/06)
  
- 3-31. An employee may request a review of a decision regarding eligibility, calculation of overtime hours, and payment to the Director in accordance with the "Dispute Resolution" chapter.

### Dual Employment

- 3-32. In a properly authorized dual employment arrangement, the written agreement shall include the exemption status designation based on the combined duties, the department responsible for paying any overtime, and the overtime hourly rate. The overtime rate, if applicable, is either the regular rate from one of the jobs or a weighted rate from both jobs. Work time from both jobs is combined to calculate overtime. (1/1/18)

### Work Hours

- 3-33. In order to minimize overtime liability, appointing authorities may deny, delay, or cancel leave before it is taken. Appointing authorities may require the use of accrued compensatory time but cannot schedule compensatory time if that will make an employee forfeit annual leave at the end of the fiscal year. (1/1/18)
- 3-34. Compensatory time is not leave, but a form of compensation. Therefore, it is not included in the calculation of work hours for overtime purposes.
- 3-35. Overtime does not accrue until a non-exempt employee works more than the maximum hours allowed in a workweek or designated work period. All time worked must be recorded on a daily basis. Overtime is calculated based on the total time worked in the workweek or designated work period, rounded to the nearest quarter hour. If operational needs require an employee to regularly report to work early or leave late, that time is counted as work hours for weekly overtime purposes.
- 3-36. Essential, non-exempt positions, as designated by a department head, shall have paid leave counted as work time. Essential positions perform law enforcement, highway maintenance, and support services directly responsible for the health, safety, and welfare of patients, residents, students, and inmates.
- 3-37. Scheduled meal periods are discretionary. Scheduled meal periods are not work time and must be at least 20 minutes. However, if the employee is materially interrupted or not completely free from duties, the meal period is counted as work time.
- 3-38. Work breaks are discretionary. If granted, breaks of up to 20 minutes are work time. Breaks shall not offset other work time or substitute for paid leave, not be taken at the beginning or end of the workday, nor be used to extend meal periods.
- 3-39. Ordinary travel to and from work is not work time. Travel from work site to work site is work time. When an employee is required to travel a substantial distance to perform a job away from the regular work site, the travel is work time.
- 3-40. Mandatory training or meetings are work time. Voluntary training during work hours, as approved by the appointing authority, which is directly related to an employee's job and is designed to enhance performance, is work time. Voluntary training after hours to gain additional skill or knowledge is not work time, even if it is job related.

### Recordkeeping

- 3-41. FLSA requires that certain basic records be maintained for both exempt and non-exempt employees. Each department is accountable for maintaining those records. (7/1/07)

- 3-42. Time records must be ~~certified~~ approved by both the employee and the supervisor. The time records and are the basis for overtime calculation and compensation.

### **Other Premium Pay**

- 3-43. Shift Differential is additional pay beyond base pay for employees working shifts. Eligible classes are published in the annual pay plan. Department heads may designate eligibility for individual positions in classes not published and shall maintain records for such cases. Shift differential does not apply to any periods of paid leave. Second shift rate applies when half or more of the scheduled work hours fall between 4:00 p.m. and 11:00 p.m. Third shift rate applies when half or more of the scheduled work hours fall between 11:00 p.m. and 6:00 a.m. If hours are evenly split between shifts, the higher shift differential rate applies to all hours worked during the shift. (1/1/18)
- 3-44. Call Back applies when an eligible employee is required to report to work before the start or after the end of a scheduled shift. If there is no release from work between the call back hours and regular shift, it is considered a continuation of the shift and call back does not apply. When call back applies, a minimum of two hours of the employee's regular base pay is guaranteed. Eligible employees are those who are eligible for overtime, and any call back time is counted as work time. Employees exempt from overtime are also eligible when approved by a department head. (1/1/18)
- 3-45. On Call is additional pay beyond base pay for employees specifically assigned, in advance, to be accessible outside of normal work hours and where freedom of movement and use of personal time is significantly restricted. Eligible classes and the rate are published in the annual pay plan. A department head may designate eligibility for individual positions in classes not published and maintain records of such on-call designations. Only time while actually on call shall be paid at the special rate. In call back situations, employees eligible for both on call and call back pay shall receive call back pay only. (1/1/18)
- 3-46. Second Domicile is additional discretionary pay up to 10 percent of base pay for employees who are required to maintain a second domicile for more than 10 consecutive calendar days while working out-of-state on official state business. The department head must authorize such payments.
- 3-47. Repealed. (1/1/18)
- 3-48. Housing Premium is a stipend granted by a department head to designated employees living and working in high housing cost areas with demonstrated recruitment and retention problems. It is not part of the base rate and may begin or end at any time. Records on any aspect of this premium must be provided to the Director when requested.
- 3-49. Discretionary Pay Differentials. A department may use non-base building discretionary pay differentials on a temporary basis, which shall be funded within existing budgets. Use of these pay differentials is at the discretion of the appointing authority and shall not be used as a substitute for annual compensation adjustments, other pay policies, or promotions. No differential is guaranteed and, if granted, may be discontinued at any time. No aspect of any discretionary pay differential is subject to grievance or appeal, except for discrimination; however, an alleged violation of the department's plan can be disputed. A department's decision in the dispute is final and no further recourse is available. Departments must develop and communicate a written plan addressing appropriate criteria for the use of any differential based on sound business practice and needs. If granted, there must be an individual written agreement between the employee and appointing authority that stipulates the terms and conditions of the differential, including the dates

the differential will begin and end. Records of any aspect of these differentials must be provided to the Director when requested. (8/1/08)

- A. Counteroffer to a verifiable job offer may be used when an employee with critical strategic skills receives a higher salary offer from another department or outside employer and the appointing authority needs to retain the employee. The sum of a non-base building differential and current base pay cannot exceed a statutory lid in any given month and may be paid in one or more payments. (8/1/08)
  - B. Signing bonus is a non-base building lump sum that may be used to attract new permanent employees into the state personnel system. It may be paid in one or several payments; however, the sum of the bonus and current base pay cannot exceed a statutory lid in any given month. Signing bonuses may be used for the following reasons:
    - 1. to fill positions in critical occupations where there is a documented shortage in the labor market and recruitment or retention difficulty in the department that jeopardizes its mission; or,
    - 2. when the applicant possesses a unique, critical skill in relation to the job market.
  - C. Referral award is a non-base building lump sum that may be granted to a current employee for the referral and subsequent hire of a new employee into the state personnel system where the position requires a unique, specialized skill and there is a documented shortage in the labor market and recruitment or retention difficulty in the department. This award is to be used for permanent employees unless the Director grants an exception. Employees who influence or are responsible for hiring and those performing recruitment as part of their regular assignments are ineligible. The sum of the award and current base pay cannot exceed a statutory lid in any given month.
  - D. Temporary pay differential is a non-base building award that may be granted to a current permanent employee in the same position. The sum of the temporary award and current base pay shall not exceed a statutory lid in any given month and is paid through regular payroll. This differential shall not be used as a substitute for the promotional or allocation process. Temporary pay differentials may be used for the following reasons:
    - 1. acting assignment where the employee assumes the full set of duties (not "in absence of") of a higher-level position that is vacant or the incumbent is on extended leave for a period longer than 30 days but less than nine months. The differential shall not exceed nine months for any given acting assignment;
    - 2. long-term project assignment that is not an expected or customary part of the regular assignment and is critical to the mission and operations of the department as defined by the purpose of the project, its time frame, and the critical nature and expected results; or,
    - 3. retain a unique, specialized set of skills or knowledge that is critical to the mission and productivity of the department. The loss would result in documented severe adverse effect on the department's mission and productivity.
- 3-50. Hazardous Duty is a non-base building premium that may be granted to positions working in occupations where exposure to physical hazards is not a customary part or expectation of the occupation and its preparation for entry. Such positions work for a majority of their time in settings that involve clear, direct, and unavoidable exposure to risk of major injury or loss of life even after making allowances for safety. This premium is not guaranteed and, if granted, may be

discontinued at any time. No aspect of this premium pay can be grieved or appealed, except for alleged discrimination. Departments must develop appropriate criteria for the use of hazard pay based on sound business practice and need, and communicate these criteria prior to use of this premium. The premium rate will be published in the annual pay plan and, in combination with current base pay and other premium pay, cannot exceed a statutory lid in any given month. (1/1/18)

### **Postemployment Compensation (9/1/12)**

- 3-51. Postemployment compensation, which includes voluntary separation incentives or severance pay, are discretionary financial payments that may be offered to certified employees when a layoff has happened or may happen based upon documented lack of funds, lack of work, or reorganization. Post employment compensation may include, but is not limited to, a hiring preference, payment towards the continuation of health benefits, tuition or educational training vouchers, portion of salary, placement on a reemployment list. Postemployment compensation may be contingent upon an employee's waiver of retention and reemployment rights, but waiving those rights does not affect the employee's eligibility for reinstatement. A department head must establish a postemployment compensation plan before a department makes any postemployment compensation offers. (1/1/14)
- 3-52. Any total post employment compensation payment and other benefits shall not exceed an amount equal to one week of an employee's salary for every year of his or her service, up to 18 weeks. Any additional limitations shall be established and published by the director, taking into consideration prevailing market practice and other factors. (1/1/18)
- 3-53. Repealed. (1/1/18)
- 3-54. The employee and department must execute a written contract before payment of any post employment compensation. The contract must include the following provisions. (1/1/14)
1. A statement that the employee is required to pay all applicable taxes on the payment;
  2. The employee's acknowledgement that the state will withhold taxes according to law before payment;
  3. The employee's agreement to waive retention and reemployment rights, if applicable, along with a statement that the contract is voluntary and not coerced or obtained through means other than the terms of the contract; (9/1/12)
  4. The date of the employee's last day of work;
  5. An acknowledgement that no payment will be made until after the last day of work and compliance with other provisions of the contract; and,
  6. Upon signature, a copy of each contract must be provided to the state personnel director. (9/1/12)
  7. The employee's agreement to waive any and all claims they may have or assert against the employer, relative to their employment prior to the execution of this agreement. (9/1/12)

### **Chapter 5 - Time Off**

Authority for rules promulgated in this chapter is found in one or more of the following: the State of Colorado Constitution Article XII, Section 13, The Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Family Care Act (FCA), Uniformed Services Employment and Reemployment Rights Act (USERRA), the State of Colorado Constitution Article XII, Section 13, The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), and 26 U.S.C. 63, State of Colorado Revised Statutes (C.R.S.) §§ 1-6-115, 1-6-122, 1-7-102, 8-40-101, 14-2-101, 14-15-103, 24-11-101, 24-11-112, 24-18-102, 24-33.5-825, 24-50-104, 24-50-109.5, 24-50-401, 28-1-104, 28-3-601, 28-6-602, 28-3-607, 28-3-609, and 28-3-610. (02/2017).

## **General Principles**

- 5-1. Employees are required to work their established work schedule unless on approved leave. Employees are responsible for requesting leave as far in advance as possible. The leave request must provide sufficient information to determine the type of leave. (5/1/10)
- A. The appointing authority shall respect the employee's privacy rights when requesting adequate information to determine the appropriate type of leave. (02/2017)
  - B. Appointing authorities are responsible for approving all leave requests and for determining the type of leave granted, subject to these rules and any additional departmental leave procedures. Departmental procedures shall be provided to employees. (02/2017)
  - C. Unauthorized use of any leave may result in the denial of paid leave and/or corrective or disciplinary action.
  - D. Mandates to maintain a minimum balance of sick or annual leave (or a combination of both) are not permitted except under a leave sharing program or a corrective or disciplinary action. (02/2017)
- 5-2. Paid leave is to be exhausted before an employee is placed on unpaid leave, unless the reason for leave does not qualify for the type of leave available, or during a mandatory or voluntary furlough. (02/2017)
- 5-3. Departments shall keep accurate leave records in compliance with rule and law and be prepared to report the use of any type of leave when requested by the Director. (5/1/10)

## **Accrued Paid Leave**

- 5-4. Annual leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may establish periods when annual leave will not be allowed, or must be taken, based on business necessity. These periods cannot create a situation where the employee does not have a reasonable opportunity to use requested leave that will be subject to forfeiture. If the department cancels approved leave that results in forfeiture, the forfeited hours must be paid before the end of the fiscal year. (5/1/10)
- 5-5. Sick leave is for health reasons only, including diagnostic and preventative examinations, treatment, and recovery. Accrued sick leave may be used for the health needs of the employee, employee's child, parent, spouse, injured military service member as established under Rule 5- 20, legal dependent, or a person in the household for whom the employee is the primary care giver. The appointing authority may require documentation of the familial relationship. (02/2017)

- A. Appointing authorities may use discretion to send employees home for an illness or injury that impacts the employee's ability to perform the job or the safety of others. Sick leave shall be charged but annual leave shall be charged if sick leave is exhausted; unpaid leave if both annual and sick leave are exhausted. (02/2017)
- B. Employees shall provide the State's authorized form (or other official document containing the same information) from a health care provider for an absence of more than three consecutive full working days for any health reason or the use of sick leave shall be denied. Appointing authorities have the discretion to require the State's authorized form (or other official document containing the same information) for absences of less than three days when the appointing authority has a reasonable basis for suspecting abuse of sick leave. (02/2017)
  - 1. The completed official form or document must be returned within 15 days from the appointing authority's request. (02/2017)
  - 2. Failure to provide the State's authorized form (or other official document containing the same information) may result in corrective/disciplinary action. Appointing authorities have the discretion to approve other forms of leave if sick leave is denied. (02/2017)

#### **Exhaustion of Leave and Administrative Discharge**

- 5-6. If an employee has exhausted all credited paid leave and is unable to return to work, unpaid leave may be granted or the employee may be administratively discharged by written notice following a good faith effort to communicate with the employee. Administrative discharge applies only to exhaustion of leave. (5/1/10)
  - A. The notice of administrative discharge must inform the employee of appeal rights and the need to contact the employee's retirement plan on eligibility for retirement.
  - B. An employee cannot be administratively discharged if FML or short-term disability leave (includes the 30-day waiting period) apply, or if the employee is a qualified individual with a disability under the ADA who can reasonably be accommodated without undue hardship.
  - C. A certified employee who has been discharged under this rule and subsequently recovers has reinstatement privileges.

5-7. Table (02/2017)

| Monthly Leave Earning, Accrual, Payout, and Restoration for Permanent Employees  |             |                |   |   |                |  |  |
|--|-------------|----------------|---|---|----------------|--|--|
| Annual Leave   |             |                |   | Sick Leave  |                |  |  |
| Years of Service*  | Hrs. / Mon. | Max. Accrual** | Payout  | Hrs./ Mon.  | Max Accrual*** | Restoration  | Payout   |
| Years 1 - 5<br>(01 - 60 Months)  | 8           | 192 hours      | Upon termination or death, unused leave is paid out up to the maximum accrual rate. | 6.66  | 360 hours      | Previously accrued sick leave up to 360 hours is restored when eligible for reinstatement or reemployment. | Upon death or if eligible to retire, 1/4 of unused leave paid out to the maximum accrual rate. PERA's age and service requirements under the Defined Benefit plan are applied regardless of the plan actually enrolled in. |
| Years 6 - 10<br>(61 - 120 Months)  | 10          | 240 hours      |   |   |                |  |  |
| Years 11 -15<br>(121 - 180 Months)   | 12          | 288 hours      |   |   |                |  |  |
| Year 16 or Greater (181 or more Months)  | 14          | 336 hours      |   |   |                |  |  |
| <p>*Years of service is computed from the 1st calendar day of the month following the hire date; except if the employee began work on the 1st working day of a month, include that month in the count. Employees with prior permanent state service, in or out of the state personnel system, earn leave based on the total whole months of service, excluding temporary assignments.</p> <p>** Over-accrued amounts are forfeited at the beginning of the new fiscal year (July 1st).</p>   |             |                |   | <p>*** Over-accrued sick leave up to 80 hours is converted to annual leave each new fiscal year (July 1st) at a 5:1 ratio (5 hours of sick converts to 1 hour annual leave). An employee may have an individual maximum accrual that is greater than 360 hours if continuously employed in the state personnel system prior to 7/1/88. Maximum accrual for these employees is calculated by adding 360 hours to the leave balance on 6/30/88.</p> |                |  |  |
| <p><b>General Provisions:</b> Employees must be at work or on paid leave to earn monthly leave. Leave is credited on the last day of the month in which it is earned and is available for use on the first day of the next month, subject to any limitations elsewhere in Chapter 5, Time Off. A terminating employee shall be compensated for annual leave earned through the last day of employment. Part-time employees who work regular, non-fluctuating schedules earn leave on a prorated basis based on the percentage of the regular appointment, rounded to the nearest 1/100 of an hour. Leave for part-time employees who work irregular, fluctuating schedules and full-time employees who work or are on paid leave less than a full month is calculated by dividing the number of hours paid by the number of work hours in the monthly pay period. The percentage is then multiplied by the employee's leave earning rate to derive the leave earned. Overtime hours are not included in leave calculations. Leave payouts at separation are calculated using the annualized hourly rate of pay (annual salary divided by 2080 hours for full-time employees), and employees are only eligible for the sick leave payout one time - initial eligibility for retirement. Borrowing against any leave that may be earned in the future or "buying back" leave already used is not allowed. Forfeiture of leave as a disciplinary action or a condition of promotion, demotion, or transfer is not allowed. Use of annual leave cannot be required for an employee being laid off. Make Whole: When an employee is receiving workers' compensation payments, accrued paid leave is used to make the employee's salary whole in an amount that is closest to the difference between the temporary compensation payment and the employee's gross base pay, excluding any pay differentials. Leave earning is not prorated when an employee is being made whole. Short-Term Disability: Employees are required to use paid leave during the 30-day waiting period for short-term disability benefits, including the use of accrued annual leave and/or compensatory time once sick leave has been exhausted. Any remaining sick leave beyond the 30-day waiting period must be exhausted prior to eligibility for short-term disability benefit payments.</p> |             |                |   |   |                |  |  |



## Leave Sharing

- 5-8. Leave sharing allows for the transfer of annual leave between permanent state employees for an unforeseeable life-altering event beyond the employee's control, and is subject to the discretionary approval of a department head. Departments must develop and communicate their programs prior to use, including criteria for qualifying events. The authority to approve leave sharing shall not be delegated below the department head without advance written approval of the Director. (02/2017)
- 5-9. Employees must have at least one year of state service to be eligible. Leave sharing is not an entitlement even if the individual case is qualified. Donated leave is not part of the leave payout upon termination or death. (5/1/10)
- A. Donated leave is allowed for a qualifying event for the employee or the employee's immediate family member as defined under Rule 5-5. In order to use donated leave, the employee must first exhaust all applicable paid leave and compensatory time and must not be receiving short-term disability or long-term disability benefit payments. If all leave is exhausted, donated leave may be used to cover the leave necessary during the 30-day waiting period for short-term disability benefit payments. The transfer of donated leave between departments is allowed only with the approval of both department heads. (02/2017)

## Holiday Leave

- 5-10. Permanent full-time employees on the payroll when the holiday is observed are granted eight hours of paid holiday leave (prorated for permanent part-time ~~work or unpaid leave in the month~~employees) to observe each legal holiday designated by law, the Governor, or the President. Appointing authorities may designate alternative holiday schedules for the fiscal year. If a holiday occurs while an employee is on paid leave, the employee receives the holiday. If a holiday occurs when an employee is on unpaid leave, it is then prorated; see Rule 5-17 for unpaid leave definitions. ~~(5/1/10)~~ (11/1/19)
- A. Department heads have the discretion to grant employee requests to observe César Chávez day, March 31, in lieu of another holiday in the same fiscal year. The department must be open and at least minimally operational for both days and the employee must have work to perform.
- B. Each department shall establish an equitable and consistent policy to ensure that all permanent employees are granted their full complement of holidays. (02/2017)

## Other Employer-Provided Leaves

- 5-11. The types of leave in this section do not accrue, carry over, or pay out. (5/1/10)
- 5-12. Bereavement leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may provide up to 40 hours (prorated for part-time work or unpaid leave in the month) of paid leave to permanent employees for the death of a family member or other person. Employees are responsible for requesting the amount of leave needed. Documentation may be required when deemed necessary by the appointing authority. (02/2017)
- 5-13. Military leave provides up to 15 paid regular workdays in a fiscal year to permanent employees who are members of the National Guard, military reserves, or National Disaster Medical Service to attend the annual encampment or equivalent training or who are called to

active service, including declared emergencies. Unpaid leave is granted after exhaustion of the 15 regular workdays. The employee may request the use of annual leave before being placed on unpaid leave. (02/2017)

A. In the case of a state emergency, the employee must return upon release from active duty. In the case of federal service, the employee must notify the appointing authority of the intent to return to work, return to work, or may need to apply to return, and is entitled to the same position or an equivalent position, including the same pay, benefits, location, work schedule, and other working conditions. This leave is not a break in service. (02/2017)

5-14. Jury leave provides paid leave to all employees; however, temporary employees receive paid leave for a maximum of three days of jury leave. Jury pay is not turned over to the department. Proof may be required. (02/2017)

5-15. Administrative leave may be used to grant paid time when the appointing authority wishes to release employees from their official duties for the good of the state. In determining what is for the good of the state, an appointing authority must consider prudent use of taxpayer and personal services dollars and the business needs of the department. (02/2017)

A. Activities performed in an official employment capacity, including job-related training and meetings, voluntary training, conferences, participation in hearings or settlement conferences at the direction of the Board or Director, and job-related testimony in court or official government hearings required by an appointing authority or subpoena are work time and not administrative leave. Administrative leave is not intended to be a substitute for corrective or disciplinary action or other benefits and leave. (02/2017)

B. Administrative leave may be granted for the following: (02/2017)

1. Up to five days for local or 15 days for national emergencies per fiscal year to employees who are certified disaster service volunteers of the American Red Cross. (02/2017)
2. One period of administrative leave for the initial call up to active military service in the war against terrorism of which shall not exceed 90 days and applies after exhaustion of paid military leave. Administrative leave is only used to make up the difference between the employee's base salary (excluding premiums) and total gross military pay and allowances. The employee must furnish proof of military pay and allowances. This leave does not apply to regular military obligations such as the annual encampment and training. (02/2017)
3. Employee participation in community or school volunteer activities. (02/2017)
4. Employee recognition for special accomplishments or contributions in accordance with the department's established incentive plan. (02/2017)

C. Administrative leave must be granted for the following: (02/2017)

1. Two hours to participate in general elections if the employee does not have three hours of unscheduled work time during the hours the polls are open. (02/2017)

2. Up to two days per fiscal year for organ, tissue, or bone donation for transplants. (02/2017)
  3. To serve as an uncompensated election judge unless a supervisor determines that the employee's attendance on Election Day is essential. The employee must provide evidence of service. (02/2017)
  4. Up to 15 days in a fiscal year when qualified volunteers or members of the Civil Air Patrol are directed to serve during a declared local disaster, provided the employee returns the next scheduled workday once relieved from the volunteer service. (02/2017)
- 5-16. Administrative leave that exceeds 20 consecutive working days must be reported to the department head and the Director. (02/2017)
- 5-17. Unpaid leave may be approved by the appointing authority unless otherwise prohibited. The appointing authority may also place an employee on unpaid leave for unauthorized absences and may consider corrective and/or disciplinary action. Probationary and trial service periods are extended by the number of days on unpaid leave and may be extended for periods of paid leave. The amount of unpaid leave for employees paid on a monthly pay cycle is calculated based on the monthly salary multiplied by the number of unpaid leave hours divided by the number of hours in the pay period. The amount of unpaid leave for non-exempt employees paid on a biweekly pay cycle calculated based on the hourly pay rate multiplied by the number of unpaid leave hours. The amount of unpaid leave for exempt employees paid on a biweekly pay cycle is calculated based on the biweekly salary multiplied by the number of unpaid leave hours divided by the number of hours in the pay period. ~~Unpaid leave is calculated based on the monthly hourly rate. (1/1/14)- (11/1/2019)~~
- A. Short-term disability (STD) leave is a type of unpaid leave of up to six months while either state or PERA STD benefit payments are being made. To be eligible for this leave, employees must have one year of service and an application for the STD benefit must be submitted within 30 days of the beginning of the absence or at least 30 days prior to the exhaustion of all accrued sick leave. The employee must also notify the department at the same time that a benefit application is submitted.
  - B. Voluntary furlough is unpaid job protection granted for up to 72 workdays per fiscal year when a department head declares a budget deficit in personal services. The employee may request such absence to avoid more serious position reduction or abolishment. Employees earn sick and annual leave and continue to receive service credit as if the furlough had not occurred.
  - C. Victim protection leave is unpaid job protection granted for up to 24 hours (prorated for part-time employees) per fiscal year for victims of stalking, sexual assault, or domestic abuse or violence. An employee must have one year of state service to be eligible and have exhausted all annual and, if applicable, sick leave. All information related to the leave shall be confidential and maintained in separate confidential files with limited access. Retaliation against an employee is prohibited; however, this rule does not prohibit adverse employment action that would have otherwise occurred had the leave not been requested or used.
- 5-18. Parental Academic leave. Departments may provide up to 18 hours (prorated for part-time) in an academic year for parents or legal guardians to participate in academic-related activities. A department shall adopt and communicate a policy on whether the leave will be unpaid or paid, the

amount and type of paid leave, and specifically the substitution of annual leave or use of administrative leave. (02/2017)

### **Family/Medical Leave (FML)**

- 5-19. The state is considered a single employer under the Family and Medical Leave Act (FMLA) and complies with its requirements, the Family Care Act (FCA), and the following rules for all employees in the state personnel system. Family/medical leave cannot be waived. (02/2017)
- A. The FCA provides unpaid leave to eligible employees to care for their partners in a civil union or domestic partnership who have a serious health condition and is administered consistent with FML. (02/2017)
- 5-20. FML is granted to eligible employees for the following conditions: (02/2017)
- A. Birth and care of a child and must be completed within one year of the birth; (02/2017)
  - B. Placement and care of an adopted or foster child and must be completed within one year of the placement; (02/2017)
  - C. Serious health condition of an employee's parent, child under the age of 18, an adult child who is disabled at the time of leave, spouse, partner in a civil union, or registered domestic partner for physical care or psychological comfort; see Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, And Definitions for the definition of serious health condition and ADA definition for disability; (02/2017)
  - D. Employee's own serious health condition; (02/2017)
  - E. Active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or (02/2017)
  - F. Military caregiver leave for a parent, child, spouse, or next of kin who suffered a serious injury or illness in the line of duty while on active duty. Military caregiver leave includes time for veterans who are receiving treatment within five years of the beginning of that treatment. (02/2017)
- 5-21. To be eligible for FML, an employee must have 12 months of total state service as of the date leave will begin, regardless of employee type. A state temporary employee must also have worked 1250 hours within the 12 months prior to the date leave will begin. Time worked includes overtime hours. (02/2017)
- A. Full-time employees will be granted up to 520 hours per rolling 12-month period. The amount of leave is determined by the difference of 520 hours and any FML leave taken in the previous 12-month period and is calculated from the date of the most recent leave. The amount of leave is prorated for part-time employees based on the regular appointment or schedule. Any extension of leave beyond the amount to which the employee is entitled is not FML, see Rule 5-1 B. (02/2017)
- 5-22. Military caregiver leave is a one-time entitlement of up to 1040 hours (prorated for part-time) in a single 12-month period starting on the date the leave begins. While intermittent leave is

permitted, it does not extend beyond the 12-month period. In addition, the combined total for military caregiver and all other types of FML shall not exceed 1040 hours. (5/1/10)

- 5-23. All other types of leave, compensatory time, and make whole payments under workers' compensation run concurrently with FML and do not extend the time to which the employee is entitled. The employee must use all accrued paid leave subject to the conditions for use of such leave before being placed on unpaid leave for the remainder of FML. An employee on FML cannot be required to accept a temporary "modified duty" assignment even though workers' compensation benefits may be affected. (7/1/13)
- 5-24. Unpaid leave rules apply to any unpaid FML except the state continues to pay its portion of insurance premiums. An employee's condition that also qualifies for short-term disability benefits must comply with the requirements of that plan.
- 5-25. Employer Requirements. The appointing authority, human resources director, or FMLA coordinator must designate and notify the employee whether requested leave qualifies as FML based on the information provided by the employee, regardless of the employee's desires. Departments shall follow all written directives and guidance on designation and notice requirements. (02/2017)
- 5-26. Employee Requirements. Written notice of the need for leave must be provided by the employee 30 days in advance. If an employee becomes aware of the need for leave in less than 30 days in advance, the employee shall provide notice either the same day or the next business day. Failure to provide timely notice when the need for leave is foreseeable, and when there is no reasonable excuse, may delay the start of FML for up to 30 days after notice is received as long as it is designated as FML in a timely manner. Advance notice is not required in the case of a medical emergency. In such a case, an adult family member or other responsible party may give notice, by any means, if the employee is unable to do so personally. (5/1/10)
- 5-27. The employee shall consult with the appointing authority to: establish a mutually satisfactory schedule for intermittent treatments and a periodic check-in schedule; report a change in circumstances; make return to work arrangements, etc. (5/1/10)
- 5-28. Employees shall provide proper medical certification, including additional medical certificates and fitness-to-return certificates as prescribed in Rules 5-29 through 5-32. If the employee does not provide the required initial and additional medical certificates, the leave will not qualify as FML and shall be denied. (02/2017)

### **Medical Certificates**

- 5-29. Employees must provide the State's authorized medical certification form (or other official document containing the same information) when initiating an FML leave request. Appointing authorities have the discretion to require periodic medical certification to determine if FML continues to apply or when the appointing authority has a reasonable basis for suspecting leave abuse. Medical certification for FML may be required for the first leave request in an employee's rolling 12-month period. Additional medical certification may be required every 30 days or the time period established in the initial certification, whichever is longer, unless circumstances change or new information is received. (02/2017)
  - A. The medical certification must be completed by a health care provider as defined in federal law. The completed medical certification must be returned within 15 days from the appointing authority's request. If it is not practical under the particular circumstances to provide the requested medical certification within 15 days despite the employee's diligent, good faith efforts, the employee must

provide the medical certification within a reasonable period of time involved, but no later than thirty calendar days after the initial date the appointing authority requested such medical certification. (02/2017)

- B. Failure to provide the medical certification shall result in denial of leave and possible corrective/disciplinary action. (7/1/13)

5-30. When incomplete medical certification is submitted, the employee must be allowed seven days to obtain complete information, absent reasonable extenuating circumstances. (7/1/13)

- A. Following receipt of the information or the seven days from which it was requested, the department's human resources director or FMLA coordinator may, with the employee's written permission, contact the health care provider for purposes only of clarification and authentication of the medical certification. (02/2017)

5-31. When medical certification is submitted to demonstrate that the leave is FML-qualifying, the department has the right to request a second opinion on the initial certification. If the first and second opinion conflict, the department may require a binding third opinion by a mutually agreed upon health care provider. Under both circumstances the cost is paid by the department. Second and third opinions are not permitted on additional certification for recertification purposes. (02/2017)

5-32. If an absence is more than 30 days for the employee's own condition, the employee must provide a fitness-to-return certificate. The fitness-to-return certificate may be required for absences of 30 days or less based on the nature of the condition in relation to the employee's job. The department may also require a fitness-to-return certificate from employees taking intermittent FML every 30 days if there are reasonable safety concerns regarding the employee's ability to perform his or her job duties. (02/2017)

- A. When requested, employees must present a completed fitness-to-return certificate before they will be allowed to return to work. Failure to provide a fitness-to-return certificate as instructed could result in delay of return, a requirement for new medical certification, or administrative discharge as defined in Rule 5-6. (7/1/13)

- B. When an incomplete fitness-to-return certification is submitted, the employee must be allowed seven days to obtain complete information, absent reasonable extenuating circumstances. Following receipt of the information or the seven days from which it was requested, the department's human resources director or FMLA coordinator may, with the employee's written permission, contact the health care provider for purposes only of clarification and authentication of the fitness-to-return certification. (02/2017)

5-33. Benefits coverage continues during FML. If the employee is on paid FML, premiums will be paid through normal payroll deduction. If the FML is unpaid, the employee must pay the employee share of premiums as prescribed by benefits and payroll procedures. (5/1/10)

5-34. Upon return to work, the employee is restored to the same, or an equivalent, position, including the same pay, benefits, location, work schedule, and other working conditions. If the employee is no longer qualified to perform the job (e.g., unable to renew an expired license), the employee must be given an opportunity to fulfill the requirement. (5/1/10)

- A. If the employee is no longer able to perform the essential functions of the job due to a continuing or new serious health condition, the employee does not have restoration rights under FML, and the appointing authority may separate the employee pursuant to Rule 5- 6 subject to any applicable ADA provisions. (02/2017)
  - B. The employee does not have restoration rights if the employment would not have otherwise continued had the FML leave not been taken, e.g., discharge due to performance, layoff, or the end of the appointment.
- 5-35. FML does not prohibit adverse action that would have otherwise occurred had the leave not been taken. (5/1/10)
- 5-36. The use of FML cannot be considered in evaluating performance. If the performance plan includes an attendance factor, any time the employee was on FML cannot be considered. (5/1/10)
- 5-37. Records. Federal law requires that specified records be kept for all employees taking FML. These records must be kept for three years. Any medical information must be maintained in a separate confidential medical file in accordance with ADA requirements and Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, And Definition. (02/2017)

### **Injury Leave**

- 5-38. Injury Leave. A permanent employee who suffers an injury or illness that is compensable under the Workers' Compensation Act shall be granted injury leave up to 90 occurrences (whole day increments regardless of the actual hours absent during a day) with full pay if the temporary compensation is assigned or endorsed to the employing department. (5/1/10)
- A. If after 90 occurrences of injury leave an employee still is unable to work, the employee is placed on leave under the "make whole" policy. The employee will receive temporary disability benefits pursuant to the Colorado Workers' Compensation Act. The employing department will make up the difference between the temporary disability benefits and the employee's full pay using sick leave first, then annual leave or compensatory time as available. Once all paid leave is exhausted, employees may be given unpaid leave. Workers' compensation payments after termination of injury leave shall be made to the employee as required by law. (02/2017)
  - B. The appointing authority may invoke Rule 5-6 if the employee is unable to return to work after exhausting all accrued paid leave and applicable job protection. Termination of service under that rule will not affect continuation of payments under the Workers' Compensation Act.
  - C. If the employee's temporary compensation payment is reduced because the injury or occupational disease was caused by willful misconduct or violation of rules or regulations, the employee shall not be entitled to or granted injury leave. Any absence shall be charged using sick leave first, then annual leave or compensatory time on a "make whole basis" or, at the appointing authority's discretion, unpaid leave may be granted and the temporary compensation payments shall be made to the employee. (02/2017)
  - D. The first three regular working days missed as a result of a compensable work injury will be charged to the employee's sick leave, then annual leave or

compensatory time, as available. Injury leave will only be granted once an eligible employee misses more than three regular working days. Sick or annual leave for the first three regular working days will be restored if the employee is off work for more than two weeks. (02/2017)

- E. If a holiday occurs while an employee is on injury leave, the employee receives the holiday and the day is not counted as an injury leave occurrence.



## Chapter 9 Fair Employment Practices

Authority for rules promulgated in this chapter is found in §24-34-402, C.R.S. Board rules are identified by cites beginning with "Board Rule".

### General Principles

Board Rule 9-1. It is to the benefit of the state to employ a diverse workforce that reflects the character of its general population to assist in providing effective services to citizens.

Board Rule 9-2. The state is committed to special efforts to increase representation of the population throughout all levels of the state personnel system. The state will continue to attract and retain qualified persons representing the population as future changes occur.

### Discrimination

Board Rule 9-3. Discrimination against any person is prohibited because of race, creed, color, gender (including sexual harassment), sexual orientation, national origin, age, religion, political affiliation, organizational membership, veteran's status, disability, or other non-job related factors. This applies to all employment decisions.

Board Rule 9-4. Standards and guidelines adopted by the Colorado Civil Rights Commission and/or the federal government, as well as Colorado and federal case law, should be referenced in determining if discrimination has occurred.

Board Rule 9-5. The state prohibits discrimination against any person, including members of the public, applicants and employees. Each department must notify applicants and employees of the policy prohibiting discrimination. Any means or method reasonably designed to clearly communicate the information may be used.

- A. Each department will notify applicants and employees of the name, business address, and telephone number of the ADA coordinator. Appointing authorities and employees should consult with their departmental ADA coordinator concerning what constitutes a disability, reasonable accommodation, and undue hardship.

Board Rule 9-6. If the Board finds that discrimination has occurred, it may order affirmative relief that the Board determines to be appropriate, including reinstatement or rehiring of employees, with or without back pay, front pay, and any other equitable relief the board deems appropriate. This does not prohibit settlement by the parties at any stage of the proceedings. This rule applies to claims accruing on or after January 1, 2015. (1/01/15)

9-7. ~~If the Director finds the selection and comparative analysis is a contributing factor to discrimination or unequal opportunity for all applicants, the Director can set it aside, require its redesign, void an eligible list or take other appropriate action. (3/30/13) Repeal (11/1/2019)~~

### Disputes

Board Rule 9-8. For any complaint on an action that violates the provisions of this chapter, refer to the "Dispute Resolution" chapter for further information.