

	DEPARTMENT OF PUBLIC SAFETY DEPARTMENT ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: JUN 24 2008	POLICY NO.: ADM.04.06
		SUPERSEDES (Policy No. & Date): ADM.04.06 of 5/1/04	
SUBJECT: INTERNAL COMPLAINT PROCEDURE		Page 1 of 7	

1.0 PURPOSE

To provide guidance on the proper procedures to make an internal complaint on personnel actions.

2.0 REFERENCES

- a. Hawaii Revised Statutes (HRS), §76, Civil Service Law
- b. HRS, §89-9(d), Matters Excluded from Collective Bargaining
- c. HRS, §831-3.1, as amended, Relating to Criminal History Record Checks
- d. Hawaii Administration Rules, Section 14-1-15, Definitions
- e. Section 14-13.01-1, et seq, Internal Complaint Procedure
- f. Section 14-21.1-1, et seq, State Merit Appeals Board

2.0 POLICY

Members of the general public and/or employees shall be afforded an opportunity to lodge internal complaints on personnel actions affecting them and have them addressed in an informal and timely manner.

3.0 PROCEDURES

- .1 This procedure applies to actions (not covered by collective bargaining or other established procedures) that are taken by the Director of Human Resources Development (DHRD), the Director of Public Safety (PSD), or a designee acting on behalf of either relating to:
 - a. Recruitment: Actions taken in locating applicants for employment, in receiving applications, or in referring eligible applicants to programs for employment consideration.
 - b. Examination: Actions taken in testing an applicant, including the initial probationary period. These may include but are not limited to: written tests, oral tests, interviews, essays, tests of physical fitness or ability, medical

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examinations, performance tests, training and experience evaluations, background and suitability determinations, in-basket assessment, biodata assessments, personality measures and assessment centers, and terminations for failure to satisfactorily complete the initial probationary period.

- c. Classification/Reclassification: Actions taken in assigning a civil service position to a class based on the kind and level of work performed and knowledge, skills, competencies, and qualifications required.
- d. Initial Pricing of Classes: Actions taken in assigning a new class to a pay grade.
- e. Other Employment Actions Adversely Affecting Civil Service Employees who are Excluded from Participation in Collective Bargaining: This includes termination, demotion, suspension, failing to meet performance requirements, and any other action if the employee suffers a legal wrong.
- f. Other Adverse Employment Actions that Cannot be Addressed Through the Collective Bargaining Process: This includes any disciplinary actions taken during an initial probationary period.

NOTE: This procedure is not applicable to matters covered by collective bargaining grievance procedures or matters that are covered by established and/or existing procedures (e.g. Premium Conversion Plan procedures).

.2 Person(s) who may file a complaint and time periods for filing complaints.

The following person(s) shall be entitled to file an internal complaint within the specified period:

- a. Recruitment: Any person who has filed an application for a vacant civil service position or a recruitment program and who alleges an improper recruitment action. The complaint shall be filed within seven (7) working days after the date of the notice of the recruitment action.
- b. Examination
 - 1. Any applicant who receives notification of failure to meet minimum qualifications for the class and/or position or public employment requirements for which a formal application was filed;

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2. Any applicant who receives notification of an unsatisfactory examination score;
3. Any applicant who receives notification of non-selection for a civil service position;
4. Any applicant who receives notification of unsuitability for public employment and/or a specific class of work applied for; or
5. An included or excluded employee serving an initial probationary appointment in a civil service position who is disciplined or terminated for failure to successfully complete the initial probationary period.

The complaint shall be filed within seven (7) working days after the date of the notice of the examination action.

- c. **Classification/Reclassification:** The civil service employee occupying the position as the effective date of the classification action and any subsequent civil service employee in the position up to the date of the notice of final action who believes the classification action was improper. The complaint shall be filed within twenty (20) working days after the date the notice of the classification or reclassification action issued by the office taking the action.
- d. **Initial Pricing of Classes:** The civil service incumbent of a position in a new class as of the effective date of the initial pricing action who alleges an improper pricing action. The complaint shall be filed within twenty (20) working days after the date of the notice of the pricing action issued by DHRD.
- e. **Other Employment Actions Adversely Affecting Excluded Civil Service Employees:** Any civil service employee who is excluded from collective bargaining coverage under HRS, §89-6, who alleges improper termination, demotion, suspension, performance evaluation action, or any other employment action that the employee believes is a legal wrong. The complaint shall be filed within ten (10) working days after the date of the notice of the final adverse action.
- f. **Other adverse employment actions taken on an employee that cannot be grieve through the collective bargaining grievance process:** Any employee who believes that his/her rights have been violated who cannot grieve the action through the collective bargaining process or who is ineligible to file a grievance through the collective bargaining process. The complaint shall be

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filed within ten (10) working days after the date of the notice of the final adverse action.

- g. The Department may, at its discretion, extend the time frames and/or waive other requirements noted above for good cause.

.3 General Requirements for Filing an Internal Complaint

- a. All internal complaints shall be typed or legibly hand-written on the complaint form shown in Attachment A. The complaint shall be filed with the Departmental Personnel Officer. For the following specific complaints, Attachment A shall be supplemented with:
 - 1. Initial Pricing; DHRD Form 276; or
 - 2. Classification/Reclassification; DHRD Form 259
- b. Upon receipt, the Departmental Personnel Officer shall review the complaint and take appropriate action:
 - 1. Refer and forward the complaint to DHRD if the matter is within the authority of the Director of DHRD, and notify the complainant accordingly; or
 - 2. Refer and forward the complaint to the appropriate agency, if known, if it is not within the authority of DHRD or the appointing authority individual, and notify the complainant accordingly; or
 - 3. Refer and forward the complaint to the appropriate individual at the lowest level who has the authority to act upon the complaint, who shall in turn, notify the complainant; or
 - 4. Return the complaint to the complainant if the matters are clearly subject to the collective bargaining grievance procedure and not within the jurisdiction of the Merit Appeals Board and/or if the employee has already filed a grievance on the matter.
- c. The appropriate individual who has the authority to act shall, within 30 days of receipt, notify the complainant of the progress of the processing of the internal complaint. As soon as practicable thereafter, the internal complaint procedure shall culminate in a written decision by the Departmental

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Personnel Officer or other appropriate authority who is assigned responsibility for making the final decision on the complaint.

- d. If the complaint is denied and the issues involve matters within the jurisdiction of the Merit Appeal Board (MAB), information on filing a formal appeal with the MAB shall accompany the written decision.
 - e. If the internal complaint is denied and the issues do not involve matters within the jurisdiction of the MAB, the decision on the complaint shall be final and binding, unless the matter will be within the proper jurisdiction of another body or agency.
- .4 General Principles
- a. If the complainant is not an employee, all proceedings for handling the complaint shall, as far as practicable, be conducted during the office hours convenient to the complainant.
 - b. If the complainant is an employee, all proceedings for handling the complaint shall, as far as practicable, be conducted during the employee's work hours to permit him/her time off from work with pay.
 - c. No complainant shall be coerced, discriminated against, or have reprisals taken against the complainant because he/she filed a complaint.
 - d. A complainant shall have the right to be represented by a person or persons of the complainant's own choosing at any stage in the presentation of the complaint.
 - e. The specific time limits and procedures shall be followed in processing all complaints. Any complaint not filed in accordance with this procedure or within the time limits specified within each step shall not be considered. By mutual consent of both the complainant and the Department, any steps as provided herein may be waived and/or the time limits within each step may be extended.
 - f. This internal complaint process includes any other informal process including those called administrative review.
 - g. The Department may waiver any requirements.

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.6 Appeals to the Merit Appeals Board (MAB)

- a. The internal complaint procedure shall be exhausted before an appeal is filed with the MAB.
- b. The MAB will not consider any appeal which encompasses an alleged violation not previously set forth in the internal complaint.
- c. The MAB will consider appeals only on employment decisions taken under Chapter 76, HRS, The Civil Service Law, and only from persons seeking employment or employed in civil service positions.
- d. The MAB's disposition of any appeal shall be final and binding on all affected parties, unless the matter is appealed to circuit court.
- e. If the appeal is not under the jurisdiction of the MAB, but under some other administrative agency or appellate body, the complainant is responsible for filing a timely appeal with the appropriate agency, regardless of whether the internal complaint procedure was used.
- f. Deadlines for filing a formal appeal with the MAB shall be in accordance with MAB rules:
 1. Recruitment and Examination: Within twenty (20) calendar days from the date on the notice of the final action or decision on the internal complaint.
 2. Classification and Reclassification: Within thirty (30) calendar days after the date on the notice of the final action or decision on the internal complaint.
 3. Initial Pricing of Classes: Within thirty (30) calendar days after the date on the notice of the final action or decision on the internal complaint.
 4. Other Employment Actions Adversely Affecting Excluded Civil Service Employees: Within thirty (30) calendar days after the date on the notice of the final action or decision on the internal complaint.

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g. All appeals to the MAB shall conform to all rules and/or procedures of the MAB. In the event of a conflict between this procedure and MAB rules and/or procedures, MAB rules and/or procedures shall control.

4.0 SCOPE

A copy of this procedure shall be easily accessible to all Departmental employees and the general public at the Office of the Director of the Department of Public Safety, the Departmental Personnel Office, and at offices listed in the Personnel Office.

APPROVAL RECOMMENDED:



Deputy Director for Administration

6/16/08

Date



Deputy Director for Corrections

6/18/08

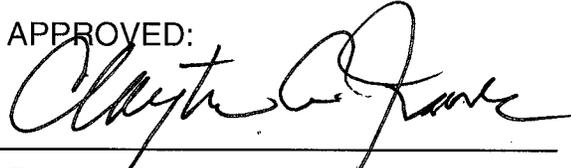
Date



Deputy Director for Law Enforcement

6-19-08

Date

APPROVED:


Director

6/24/08

Date