

**TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 130. CIVIL SERVICE AND HUMAN CAPITAL MODERNIZATION RULES**

SUBCHAPTER 1. GENERAL PROVISIONS

260:130-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning:

"Act" means the Oklahoma Civil Service and Human Capital Modernization Act.

"Action" or **"disciplinary action"** means issuing a written reprimand, punitively transferring an employee, suspending an employee without pay, involuntarily demoting an employee, or terminating an employee. The action is taken by providing a document in person that specifically states the type of action taken against the employee. In the event the Appointing Authority is unable to provide the document to the employee in person, the Appointing Authority may utilize acceptable electronic means, and the action will be complete upon receipt by the employee.

"Action occurred" means the date the action was taken.

"Administrative Law Judge" or **"ALJ"** means a person appointed by the Civil Service Division and empowered to preside over prehearing conferences and hearings with power to administer oaths, take testimony, rule on questions of evidence and make final decisions. All ALJs shall be licensed to practice law in the State of Oklahoma and in good standing with the Oklahoma Bar Association.

"Administrative Procedures Act" or **"APA"** means the Oklahoma Administrative Procedures Act set forth at Section 250 et seq. of Title 75 of the Oklahoma Statutes.

"Administrator" means the Director of the Office of Management and Enterprise Services. As the term is used in the Civil Service and Human Capital Modernization Rules, the term includes employees and the Administrator of Human Capital Management of the Office of Management and Enterprise Services to whom the Administrator has lawfully delegated authority to act on his or her behalf.

"Affidavit" means a sworn written statement, made voluntarily, and taken before a person with authority to administer an oath or affirmation.

"Affidavit of service" means a sworn written statement certifying that a motion, request or other document has been provided to other persons.

"Agency" means any office, department, board, commission or institution of the executive branch of state government.

"Allegation" means the claims of a party.

"Allege" means to state, assert or charge; to make an allegation.

"Allocation" or **"Position allocation"** means the process by which a position is assigned to an established job profile. A position is allocated on the basis of duties, authority, responsibilities, and other appropriate factors.

"Appointing Authority" means the chief administrative officer of an agency. As the term is used in the Rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.

"Burden of proof" means the obligation of a party to establish alleged fact(s) by a preponderance of evidence.

"Civil Service Division" means the division within Human Capital Management that is responsible for receiving and hearing complaints as described in the Civil Service and Human Capital Modernization Act set forth at Section 34.301 of Title 62 of the Oklahoma Statutes.

"Civil Service Division Director" means the person designated by Human Capital Management to take action on behalf of the Civil Service Division.

"Complainant" means the state employee filing the complaint.

"Complaint" means, as a verb, the filing of a complaint petition, or as a noun, the procedure that takes place after a complaint petition is filed.

"Consolidation" means the combining of complaints containing the same or similar issues but filed by two (2) or more complainants into a single complaint.

"Continuance" means a postponement of a matter scheduled by Human Capital Management or the mediator to a date certain.

"Demotion" means the reduction in salary of an employee with or without a change in job profile. Demotion may be voluntary or involuntary.

"Deny" means to refuse to grant or accept.

"Disciplinary file" means the record of all disciplinary actions leading up to a written reprimand, punitive transfer, suspension without pay, demotion, or termination, the final action taken, and all relevant supporting documents.

"Dismiss" means to close without further consideration.

"Evidence" means relevant documents or testimony offered to prove or disprove the existence or non-existence of a fact.

"Exempted employee" means an employee to whom the provisions of the Act do not apply. Exempted employees must be designated in the central system of record by the employing executive branch agency. Exempted employees are:

- (A) Persons employed by the Governor, Lieutenant Governor, Oklahoma House of Representatives, Oklahoma State Senate, Legislative Service Bureau, or the Legislative Office of Fiscal Transparency;
- (B) Elected officials;
- (C) Political appointees;
- (D) District attorneys, assistant district attorneys or other employees of the district attorney's office and the District Attorneys Council;
- (E) The state judiciary or persons employed by the state judiciary; ~~or~~
- (F) Not more than five percent (5%) of an agency's employees designated as executive management as determined by the agency director. The number of employees shall be determined by the number of active position identification numbers an agency has;
- (G) Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period;
- (H) Seasonal employees employed to work less than one thousand six hundred (1,600) hours in any twelve-month period;
- (I) Employees in a trial period; or
- (J) State employees whose employment status is otherwise provided by law.

"Exhibit" means items offered as evidence.

"Ex-parte communication" means communications by anyone with an ALJ or the Civil Service Division Director on the merits of a complaint which could affect its outcome.

"File" or **"Filing"** means submitting a complaint or other documents on the Civil Service Division's on-line filing system, or any acceptable means determined the Civil Service Division or the receipt of documents by the Civil Service Division.

"Grant" means to give or permit.

"Hearing" means an open, formal proceeding conducted by an ALJ. The proceeding is to provide each party with an opportunity to present evidence in support of their side of the case. The hearing is governed by the Oklahoma Administrative Procedures Act, Sections 309 through 316 of Title 75 of the Oklahoma Statutes.

"Human Capital Management" or **"HCM"** means Human Capital Management of the Office of Management and Enterprise Services.

"Initial appointment" or **"original appointment"** means the act of an Appointing Authority hiring a person for the first time as a state employee.

"Job code" means an identifying code that:

- (A) corresponds to a job profile, including, but not limited to, the basic purpose, typical functions performed, and the knowledge, skills, abilities, education, and experience required, and
- (B) does not include FLSA status or pay rate type, and
- (C) identifies the suggested pay range.

"Job family" means:

- (A) jobs which require similar core skills and involve similar work, and
- (B) a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the work to warrant similar treatment as to title, typical functions, knowledge, skills, abilities, education, and experience required.

"Job level" or **"level"** means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience.

"Job profile" means a level in a job family.

"Joinder" means the combining of two (2) or more complaints of one complainant.

"Jurisdiction" means the authority of the Civil Service Division to complete its duties and responsibilities.

"Jurisdictional limitations" means the statutory restrictions on the scope, time limits, and type of appeals which may be considered by the Civil Service Division.

"Mediator" means a person who assists and facilitates the parties involved in a complaint to come to a resolution.

"Minimum qualifications" means the requirements of education, training, experience and other basic qualifications for a job.

"Moot" means no longer in dispute because issues have already been decided or when rendered, a decision could not have any practical effect on the existing dispute.

"Motion" means a request for a ruling to be made by a ALJ or the Civil Service Division Director.

"New position" means a position not previously existing.

"Office of Management and Enterprise Services" means the Human Capital Management Division of the Office of Management and Enterprise Services.

"Order" means a command or directive given by an ALJ or the Civil Service Division Director.

"Party" means a complainant or respondent.

"Position" means a group of specific duties, tasks and responsibilities assigned by the Appointing Authority to be performed by one person; a position may be part time or full time, temporary, occupied or vacant.

"Prehearing conference" means a proceeding conducted by an ALJ with the parties to identify the issues, documents, witnesses and motions which will guide the ALJ in the conduct of the hearing.

"Preponderance of evidence" means information or evidence which is more convincing or believable than the information or evidence offered in opposition.

"Punitive transfer" means a transfer that is directed at and affects only one employee employed by the Appointing Authority. A punitive transfer must relocate the affected employee to a new worksite that is fifty (50) or more miles from the employee's previous worksite. A transfer that results from a closure of a worksite location or building or affects two or more employees does not qualify as a punitive transfer.

"Reallocation" or **"Position reallocation"** means the process of reassigning an established position, occupied or vacant, from one job profile to another.

"Reassignment" means the process of changing an employee from one job family to another job family or from one job level to another job level in the same job family, resulting in a change in the employee's assigned job profile.

"Regular and consistent" means, in connection with an employee's work assignments, the employee's usual and normal work assignments, excluding incidental, casual, occasional tasks, and activities the employee assumes without direction to do so. Temporary work assignments of less than sixty (60) days in any twelve (12) month period are not considered regular and consistent.

"Reinstatement" means the reappointment of a former employee and does not trigger the trial period.

"Relevant" means directly related to the issue or issues being examined.

"Remedy" means corrective action sought by or afforded to a party.

"Representative" means the designated attorney of record, who shall be licensed to practice law in the state of Oklahoma identified in the complaint petition or through an entry of appearance or other written means, acting on behalf of a party. An individual other than an attorney licensed to practice law in the state of Oklahoma may act as the representative of the party if approved by the mediator leading the mediation or the ALJ presiding over the hearing or review process.

"Resignation" means an employee's voluntary termination of his or her employment with the state.

"Respondent" or **"Responding agency"** means the state agency which the complaint has been filed against.

"Rules" means the Civil Service and Human Capital Modernization Rules.

"State employee" or **"employee"** means an employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education] in state service afforded the protections under the Act set forth at Section 34.301 of Title 62 of the Oklahoma Statutes and these Rules.

"Stipulation" means a voluntary admission of fact.

"Subpoena" means an order to appear at a certain time and place to give testimony.

"Subpoena Duces Tecum" means an order requiring the production of books, papers and other documents.

"Supervisor" means an employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education] who has been assigned authority and responsibility for evaluating the performance of other state employees.

"Sustain" means to grant a request; to grant a complaint.

"Testimony" means statements given by a witness under oath or affirmation.

"Trial period" means a working test period lasting for a period of one year following the initial hiring of a state employee into state service, the hiring of an employee who is transferring from one state agency to another state agency, or the hiring of an employee returning to state service following a break in service. The Appointing Authority has the authority to waive the trial period at any time at their discretion.

"Veteran" means any person who served the full obligation for active duty, reserves or National Guard service in the military, or received an early discharge for a medical condition, hardship or reduction in force; and has been separated or discharged from such service honorably or under honorable conditions.

SUBCHAPTER 3. STATE EMPLOYEE DISPUTE RESOLUTION PROGRAM

260:130-3-2. Mediation

(a) **General.** Mediation provides an opportunity for the parties to present and discuss settlement with each other and a mediator in order to resolve the issues of a complaint. The parties may discuss, negotiate and settle any differences or issues to reach a resolution to the complaint. The Civil Service Division will assign a mediator to the complaint as set forth in 260:130-3-4.

(b) **Party responsibility.** Each party shall be present and on time. Complainant's failure to do so may result in dismissal of the complaint unless good cause is shown. Each party is expected to negotiate in good faith, without time constraints, and put forth his or her best efforts with the intention to settle, if possible. Even if the parties do not reach a complete settlement, they may reach agreement on various issues.

(1) The complainant shall speak for himself or herself or with the assistance of a Representative.

(2) The Appointing Authority shall send one person to speak and act on behalf of the Appointing Authority with full settlement authority and a Representative.

(3) Each party attending mediation shall have knowledge and the ability to discuss the facts around the action.

(c) **Party submissions.** At the mediation, each party shall provide to the mediator a proposed settlement offer.

(d) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, accompany him or her to the mediation. Representatives will be expected to take an active role in mediation, but will not be allowed to interrogate or question any party. As set forth above in 260:130-1-1, an individual other than an attorney licensed to practice law in the state of Oklahoma may act as the representative of the party if approved by the mediator leading the mediation or the ALJ presiding over the hearing or review process.

(e) **Mediator.** The mediator shall:

(1) take an active role in the mediation to aid the parties in the discussion of settlement and resolution of the complaint;

(2) have the flexibility to adapt the mediation to the situation at hand;

(3) have the authority to require any party to produce documents, limited to the disciplinary file as defined within these Rules, for review at the mediation if to do so will aid in the discussion of settlement and resolution of the complaint. Documents produced and reviewed at the mediation shall not become part of the complaint record at that time; and

(4) terminate the mediation because of the disruptive behavior or conduct of a party or representative.

(5) approve or deny the attendance of non-participating observers for training purposes;

(6) reschedule the mediation if the party is determined to be impaired or otherwise unable to participate. All parties shall be required to attend the rescheduled mediation. The rescheduling of mediations pursuant to this provision shall conform to the statutory time requirements for conducting a hearing.

(f) **Mediation.** The mediation shall be informal, structured by the mediator, and not open to the public. The mediation shall be a confidential procedure and shall not be filmed or taped.

(1) **Notice.** At least seven (7) calendar days before the scheduled mediation, the mediator shall notify the parties of the date, time and location of the mediation.

(2) **Location.** The mediation shall be held at the appointing authority office or any other location determined appropriate by the mediator.

(3) **Witnesses.** Witnesses shall not appear or give testimony at the mediation.

(4) **Caucus.** The mediator may call a caucus at any stage of the mediation.

(5) **Continuance.** A request for continuance shall be submitted to the mediator in writing no less than three (3) calendar days before the mediation date. The mediator shall follow the

requirements of OAC 260:130-5-13 and shall reschedule the mediation ensuring the timing requirements of OAC 260:130-5-13 are followed.

(g) **Agreement.** If agreement between the parties is reached, it shall be reduced to writing and signed by each party and the mediator. The agreement shall be reviewed and approved by the Civil Service Division Director or his or her designee for complaints arising from termination, suspension without pay, involuntary demotion, or punitive transfer before dismissal of the complaint shall be entertained. The agreement shall become part of the complaint record. All mediation agreements are enforceable by a court of competent jurisdiction.

(h) **Conclusion.** The mediator shall end the mediation when an agreement is reached and reduced to writing. If an agreement is not reached, the mediator shall end the mediation when he or she determines settlement is not possible, unless sooner terminated for just cause. If agreement is not reached:

(1) a complaint arising from termination, suspension without pay, involuntary demotion, or punitive transfer shall continue on for a prehearing conference and hearing or administrative law judge review.

(2) a complaint arising from written reprimand will be considered closed and the agency's action will stand.

(i) **Pro se complainant.** A complainant who is not represented by an attorney licensed to practice law in the state of Oklahoma will first participate in mediation before proceeding to hearing. This provision shall only be applicable for complaints that are entitled to a hearing (termination, suspension without pay, involuntary demotion, or punitive transfer).

SUBCHAPTER 7. HEARING PROCESS

260:130-7-1. Prehearing conference

(a) **Purpose.** The Civil Service Division may schedule a prehearing conference on any complaint set for hearing. The conference provides an opportunity for the parties to clarify, isolate and dispose of procedural matters prior to the hearing.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Complainant's failure to do so may result in dismissal of the complaint unless extraordinary circumstances exist and are shown. By the close of business on the day Prior prior to the prehearing conference each party shall file with the Civil Service Division and provide to each other party and the ALJ a copy of:

(1) a brief statement of his or her respective case, to include a list of stipulations and requested remedy;

(2) the names of the witnesses allowed at the hearing and their contact information; and;

(3) a description of the documents and exhibits allowed at the hearing and copy of each document and exhibit to be offered.

(c) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, to speak and act on his or her behalf. The Representative may not be a fact witness or sponsor evidence.

(d) **ALJ responsibility.** The ALJ shall:

(1) consider, facilitate and rule on settlement in the event settlement occurs during the hearing or administrative law judge review process;

(2) consider any matters which will aid in the fair and prompt resolution and disposition of the complaint;

(3) hear and rule on pending requests or motions;

(e) **Conference.** The conference shall be informal, structured by the ALJ and not open to the public. The ALJ shall record the conference by digital recording.

- (1) **Notice.** Each party shall be notified of the date, time and location at least seven (7) calendar days prior to the scheduled conference.
 - (2) **Location.** The conference shall be conducted at the Human Capital Management offices or any other location determined appropriate by the ALJ.
 - (3) **Witnesses.** Witnesses shall not appear or present evidence at the conference.
 - (4) **Continuance.** A request for continuance shall be filed in accordance with OAC 260:1305-13 no less than three (3) calendar days prior to the scheduled conference. The ALJ, or in his or her absence, the Civil Service Division, shall rule on the request in accordance with OAC 260:130-5-13.
- (f) **Conclusion.** The ALJ shall end the conference when preparation for the hearing is complete, unless sooner terminated as a result of settlement or for other just cause.