

Preamble

~~Unless otherwise noted in a specific provision, the State Personnel Board Rules were adopted by the State Personnel Board on April 19, 2005, pursuant to a Statement of Basis and Purpose dated April 19, 2005; and the State Personnel Director's Administrative 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 Board to amend Board Rules, as follows: Board Rules 1-2, 1-26, 4-42, 6-10, 6-14, 8-28, 8-38, 8-39, 8-45, 8-47, 8-51, and 9-6, effective January 1, 2015. The general purpose of the Board in conducting the rulemaking was to provide for the following: (a) to clarify or update Board Rules for stakeholders, including the public; (b) to amend language in order to be consistent with current state statute.~~

~~This version reflects rulemaking by the State Personnel Director as follows: to modify Procedure 5-19 and Procedure 5-20 effective January 14, 2015 to align with the Family Care Act.~~

~~Unless otherwise noted in a specific provision, the State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 2005, pursuant to a Statement of Basis & 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 3-18.~~

~~Unless otherwise noted in a specific provision, The State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 2005, pursuant to a Statement of Basis & 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 5-1, 5-2, 5-5, 5-7, 5-8, 5-9, 5-10, 5-12, 5-13, 5-14, 5-15, 5-16, 5-18, 5-19, 5-20, 5-21, 5-25, 5-28, 5-29, 5-30, 5-31, 5-32, 5-34, 5-37, 5-38.~~

Unless otherwise noted in a specific provision, the State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 2005, pursuant to a Statement of Basis & 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 11-3, 11-7, 11-9, 11-11, 11-12, 11-16, 11-19, 11-21, 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.

Chapter 2 Jobs

Authority for rules promulgated in this chapter is found in-§ §24-50-101(32)(d), 24-50-104(1)(b), 24-50-104(5)(c), 24-50-104(6)(a) and (b), 24-50-104(9)(b), 24-50-109.5, and 24-50-135(2), C.R.S. Board rules are identified by cites beginning with "Board Rule".

Job Evaluation System

- 2-1. The Director shall establish standards regarding the creation and maintenance of the job evaluation system(s) and allocation of positions, including subsequent allocation appeals, based on generally accepted techniques and standards in the profession which are uniformly applied to similarly situated employees.
- 2-2. System maintenance studies create, amend, or abolish classes and/or include pay grade assignments. A study may include the review of all affected positions for placement in the proper new class. No allocation or appointment may be made to a proposed class until it is approved as final on a date determined by the Director. The results are not subject to appeal but are subject to "meet and confer" if requested.
- 2-3. Changes from system maintenance studies shall be published as proposed. Appointing authorities are responsible for the timely distribution of this information.

Board Rule 2-4. Examination ("Employment and Status" chapter) and layoff ("Separation" chapter) rules do not apply to class placement as part of system maintenance studies.

Individual Position Review

- 2-5. New positions must be allocated to the proper class before any further personnel action is taken.
- 2-6. The Director, or a delegated authority, may request a job description and evaluate a position at any time to determine the proper class.
- 2-7. Each position shall have an accurate official (signed by the appointing authority) job description. Appointing authorities are responsible for providing an accurate official job description for each position to the department's human resources office and a copy to the employee. Only an accurate official job description is used to allocate a position to the proper class by the department's human resources office. (5/1/10)
 - A. An appointing authority must submit the accurate official job description and any evaluation request to the department's human resources office within six months when permanent changes are made to a position's assignment.
 1. An employee may request an evaluation of his or her position if permanent changes are made and the job description has not been evaluated or updated within the previous 12 months.

2. The employee's request must be made to the appointing authority who shall submit the request, along with the accurate official job description, to the department's human resources office.
- 2-8. Positions shall be reviewed as expeditiously as possible according to the department's established procedures and practices. If the evaluation takes longer than 12 months from receipt by the proper evaluator and the position is allocated upward, the department must pay the difference in base pay for the period beyond the 12 months.
- 2-9. If a filled position is allocated to a lower pay grade, the affected employee in the position may appeal to the Director in accordance with the "Dispute Resolution" chapter. If the employee's appeal is successful, the effective date is the date of the original allocation decision.
- 2-10. The effective date of an allocation for a filled position shall be after completion of the selection process. Vacant positions are effective when the allocation decision is made.
- A. If a filled position is allocated upward, an appointment shall be made in accordance with selection provisions. If the incumbent does not qualify or is not appointed, refer to the reallocation/layoff section of the "Separation" chapter. (1/1/18)
 - B. If a filled position is allocated downward, the following applies:
 1. a qualified certified or probationary employee is permitted to voluntarily demote to the position. The certified employee will be offered, in writing, the choice of the voluntary demotion or retention rights, as applicable pursuant to 24-50-124(1)(a). If there is no response by the specified date in the written offer, the employee is deemed to have accepted the demotion and waived retention rights. Only after the election is made to exercise retention rights will the certified employee be processed under the "Separation" chapter, including notice of specific retention rights; (3/30/13)
 2. a conditional employee may revert to a position in a class in which certified. If not certified in another class, but qualified for the new class and no eligible list exists, the employee may be conditionally appointed to the position;
 3. a provisional employee may be appointed to the position if qualified and no employment list exists.
 - C. If a position is allocated to a different class with the same grade maximum, the employee who is qualified shall be transferred. If the incumbent is not qualified, refer to the reallocation/layoff section of the "Separation" chapter. (1/1/18)

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 Compensation Rates

- 3-6. The Department of Personnel shall publish the annual pay compensation 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. ~~Base pay shall be moved to the maximum at the first available opportunity that does not cause a loss in the employee's pay. However, in~~ no case will 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. (2/1/07)(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)
- ~~65.~~ 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). (9/1/12)(1/1/18)
- ~~76.~~ Bring salaries to the new grade minimum as a result of compensation survey pay grade changes, except in disciplinary actions. (1/1/18)
- ~~87.~~ Non-base merit payments (based on new annual salary). (9/1/12)(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 ~~and/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 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 ~~and the unclassified person is selected to fill the position~~, 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. ~~(02/2017)~~(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. Payments 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. ~~(9/1/12)~~(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. ~~For e~~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 ~~shall be provided~~. The proration shall be based on the number of calendar months worked. ~~(9/1/12)~~(1/1/18)
- C. ~~Base building Merit Pay (9/1/12)~~

Base building merit pay shall be ~~a base building increase~~ based on final performance evaluation and salary position within the pay range on June 1. ~~(9/1/12)~~(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 (9/1/12)~~

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. ~~(9/1/12)~~(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. Merit pay from reversion (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. ~~(9/1/12)(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. Base building merit pay increases funded from the department's state employee reserve fund shall not cause an employee's base pay to exceed the mid-point of the employee's pay range. (9/1/12)(1/1/18)~~

F. ~~Repealed. Any department providing recommendations regarding the amount that should be appropriated for merit pay must send such recommendation to the director by June 1, unless otherwise approved by the director. (9/1/12)(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 workweek (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 1½ 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)

- 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 1½ 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)
- 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) and any additional overtime must be paid at the next regular pay period. 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 by both the employee and the supervisor 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 compensation 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. (7/1/07)(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 compensation 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. (7/1/07)(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. Commission Award is non-base building pay in addition to base pay or other non-base building awards for employees in eligible classes and positions as approved by the Director, i.e., retail sales and collections. The amount of commission is paid according to a plan established by a department head and approved by the Director for individual or team performance.~~ (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 compensation 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. ~~(9/1/12)~~(1/1/18)
- 3-53. ~~Repealed. Severance pay is a discretionary financial payment that may be offered to certified employees separated from state service. (9/1/12)-(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 7 Separation

Authority for rules promulgated in this chapter is found in Colo. Const. art. XII, Sections 13, 14 and 15; § 24-50-109.5, 124, 126 and 136, C.R.S. Board rules are identified by cites beginning with "Board Rule".

General Principles

Board Rule 7-1. The appointing authority must communicate, or make a good-faith effort to communicate, with an employee before conducting any involuntary separation. The communication may be oral or written, and must provide an opportunity for the appointing authority and employee to exchange information about the separation. (3/30/13)

Board Rule 7-2. The State of Colorado seeks to promote progressive employment practices. As such, the Board strongly encourages the Governor, Director, and all appointing authorities to consider alternatives to minimize or avoid the need for layoffs of employees in the state personnel system including, but not limited to, placement into vacant positions for which the laid off or displaced employees are qualified but for which they do not have retention rights, retraining, voluntary reduction in hours or pay, job-sharing, voluntary unpaid leave, voluntary furloughs, and voluntary separation incentives. (3/30/13)

Board Rule 7-3. Department heads shall administer the layoff process for any affected employee in accordance with this chapter. Appointing authorities cannot use the layoff process as a substitute for disciplinary or corrective action. The layoff process should not prevent or interfere with other personnel actions. (3/30/13)

Resignation

Board Rule 7-4. An employee must give notice of resignation directly to the appointing authority at least 10 working days before its effective date, unless the employee and appointing authority mutually agree to less time. Failure to provide written notice, as required by § 24-50-126(1), C.R.S., may result in a delay in payout of leave and forfeiture of reinstatement privileges. If the notice is oral, the appointing authority shall provide written confirmation as soon as possible. If the employee reasonably believes the resignation was coerced or forced, the employee has 10 days from the date of the resignation to appeal to the Board, except that an employee cannot appeal a resignation that is tendered in lieu of disciplinary action. Upon receipt of any written notice of resignation or upon an appointing authority providing a written confirmation of an oral resignation, an employee must be notified, in writing, of the right to appeal a coerced or forced resignation, including the time for such an appeal, and the Board address and telephone and facsimile numbers for filing the appeal. The 10 days for an employee to appeal to the Board an alleged coerced or forced resignation shall be from the date of receipt by the employee of the notification of appeal rights. If an employee tenders a resignation in lieu of disciplinary action, the employee shall be notified in writing that he or she has waived his or her right to appeal the resignation to the Board. (3/30/13)

Board Rule 7-5. If an employee is absent without notice for three scheduled consecutive working days, the appointing authority may construe that absence as job abandonment and therefore an automatic resignation. The appointing authority shall give the employee

written notice, by certified mail, of the effective date of the employee's resignation. The employee is ineligible for reinstatement. (3/30/13)

Layoff Principles

7-6. The only reasons for layoff are lack of funds, lack of work, or reorganization. These rules apply to any reduction in force that results in the elimination of one or more occupied positions regardless of the reason for layoff. (1/1/14)

A. For any and all layoffs, department heads have the discretion initially to make the business decisions as to how their department will continue to meet its mission after engaging in the layoff process. These decisions include determining which classes or class series will best help the department meet its mission, the level of staffing by various classifications and/or class series and the agency functions to be staffed, either by facility location or department-wide, and must meet any constitutional or statutory mandates. A department head may delegate this authority to make any of the business decisions to subordinate appointing authorities within the department. Such delegation must be in writing and describe the parameters of the business decisions to be made by the subordinate appointing authority.

B. Layoff Plan: For any and all layoffs, after making its business decisions and ten days prior to issuing the first layoff notice, the department shall post a Layoff Plan, signed by the Executive Director, head of a principal department or designee, both in a conspicuous place where all impacted parties have access to view the posting and on the department's internet or intranet websites. The purpose of the Layoff Plan is to facilitate strategic planning prior to the abolishment of any positions and to provide an open and transparent explanation for the elimination of positions and/or services. The Layoff Plan shall include the following: a description of the planned changes in the fundamental structure, positions, or functions accountable to one or more appointing authorities; a list of the ranking factors and their relative weights; if applicable, an organizational chart setting out the planned changes in the fundamental structure, positions, or functions accountable to one or more appointing authorities; the reasons for the change; the anticipated benefits and results, including any cost savings; a general description of the expected changes and their effects on employees; a description of how the work performed by the eliminated positions will be absorbed by the department; a listing of the classes in which positions will be abolished as contemplated in the Layoff Plan; and, if there have been any modifications to the special qualifications for positions affected by the Layoff Plan within sixty days or less prior to publication of the Layoff Plan, a list of such positions. ~~(3/30/13)~~ (1/1/18)

1. When a function and position are transferred to another department, the employee occupying the position transfers.

Board Rule 7-7. After an appointing authority has made the initial business decisions and posted the department's Layoff Plan, the layoff of individual employees and the subsequent calculation of their retention rights, if any, must be made in accordance with the rules setting forth the priorities for determining layoff and retention rights. (3/30/13)

7-8. The layoff of certified employees whose age plus years of service credit equal 75 on or before January 1, 2013, is to be in accordance with the rules within this chapter. Layoff decisions for all other certified employees, after September 1, 2012, are to be in accordance with this chapter, except as in Board Rule 7-15, Board Rule 7-16, Board Rule 7-17, Board Rule 7-18, and Board Rule 7-19, and as set forth below. (3/30/13)

Determining Priorities for Layoff and Retention Rights

7-9. In making both layoff and retention rights decisions, rank employees based upon seniority, performance and applicable veterans preference. A department should consider weighting these three factors according to its layoff plan. (3/30/13)

Board Rule 7-10. Seniority in State Service: Seniority is the calendar year in which total state service began, plus up to 10 additional years (rounded to the next whole year for partial years) of military service for those eligible for veteran's preference. State service includes permanent status and state employment outside the state personnel system. (3/30/13)

7-11. Layoff Ranking: If applicable, The department head must establish the ranking formula for the affected area(s). The formula must be consistently applied to any employee affected by the layoff process. The formula must be communicated to all employees within the layoff plan. Employees with lower rankings must be displaced before employees with higher rankings, except, as set forth in art. XII, Section 15 of the Colorado Constitution, no veteran can be displaced before a non-veteran regardless of rank. (1/1/18)

A. If there is a tie under the department's formula, then the employee with the earliest start date of employment with the State of Colorado shall be the higher ranked employee. If the employees are still tied, then the decision shall be made by taking into account the affirmative action program established by the State Personnel Director pursuant to § 24- 50-101(3)(e), C.R.S. (3/30/13)

7-12. When a person is separated from state service based upon documented lack of funds, lack of work or reorganization, an appointing authority shall consider placing the displaced person into a vacant funded position for which they qualify. An appointing authority should consider prior experience, past performance and tenure in making such decision. (3/30/13)

Board Rule 7-13. Trial service employees are treated as if certified in the trial service class during the layoff process. Conditional employees will be considered according to their previously certified class. (3/30/13)

Notice Requirements

7-14. The department must publish the layoff plan at least 55 calendar days before the layoff is effective. ~~These~~is 55 days will incorporate at least 45 days notice to a certified employee that their position is being eliminated. The layoff notice must include appeal rights and give eligible employees at least three working days from the date of delivery to state whether they want the department to determine their retention rights and then give the employees an additional three working days to accept or reject the offer. The layoff notice

shall be delivered in person at the workplace, whenever possible. In the event the agency or department is not able to provide it in person, it should be delivered by email and/or delivered to the employee's last known address. The notice is deemed delivered when it is actually received or five days after the mailing, whichever is earlier. (1/1/18)

- A. The department must provide written notice to certified employees who are being displaced by another employee at least 10 business days before the displacement. A displaced certified employee who is separated shall be paid for at least 22 working days after receipt of the notice of displacement.
- B. The department must provide written notice to non-certified employees who are to be laid off at least 10 business days before the layoff is effective. (3/30/13)

Retention Areas

Board Rule 7-15.

- A. An eligible certified employee may exercise retention rights within the principal department in which the certified employee is employed. (3/30/13)
- B. Institutions of higher education have the following separate retention areas: each state college, each community college, each university, each campus of the University of Colorado, University of Colorado system administration, each junior college, Auraria Higher Education Center, and central staff of Community Colleges of Colorado. (3/30/13)
- C. The Department of Higher Education shall be a separate retention area in which certified employees in central staff and Colorado Student Loan Program shall have retention rights. (3/30/13)
- D. History Colorado shall be a separate retention area in which certified employees employed therein shall have retention rights. (3/30/13)
- E. For purposes of these layoff rules, the Governor's Office, and any units or offices created within the Governor's office, shall be considered a retention area. (3/30/13)

Board Rule 7-16. A department, upon approval of the Board, may limit retention rights to major divisions of the department only if its department head requests the limitation and the Board approves that request at least thirty days in advance of the posting of the Layoff Plan required by Board Rule 7-7. Any request to limit retention rights must set forth a reasonable basis for the request. (3/30/13)

Board Rule 7-17. Any request to limit retention areas must be submitted in writing on or before the twelfth day before the monthly Board meeting at which the request will be considered. A copy of the request to limit retention areas shall be provided to all affected employees by mail to their home addresses and by email to their state email address, if any, on or before submittal of the request to the Board. Any parties opposing such a request may either submit a written opposition prior to the Board meeting or testify before the Board at

the time of the Board meeting. The requestor may either submit a written response to the opposition or testify before the Board at the time of the Board meeting. (3/30/13)

Retention Rights

Board Rule 7-18. An eligible employee must meet the minimum qualifications and any bona fide special qualifications in order to have retention rights to a position. Departments may not modify special qualifications of any position in a class series impacted by a layoff after the publication of the Layoff Plan, unless the modified special qualifications are directly related to the job duties and qualifications. (3/30/13)

- A. The department shall offer retention rights in the following priority to eligible employees:
1. First, to any funded vacant position in the current certified class. If there are no funded vacant positions, then positions occupied by the following types of employees are offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the current certified class and the occupants of those positions are certified, then the lowest ranked employee shall be displaced first.
 2. If there are no available funded vacant or occupied positions in the current certified class, then a funded vacant position in a previously certified class occupied within the last two years and at the same maximum pay rate. If there are no funded vacant positions, then positions occupied by the following types of employees shall be offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in a previously certified class at the same maximum pay rate and the occupants of those positions are certified, then the lowest ranked employee within the most junior ranking shall be displaced first.
 3. If there are no available funded vacant or occupied positions in the current or a previously certified class at the same maximum pay rate, then the highest level demotion in a vacant position in the current or a previously certified class series occupied within the last two years. If there are no vacant positions, positions occupied by the following types of employees shall be offered in the current or a previously certified class series in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the highest level demotion in the current or a previously certified class series and the occupants of those positions are certified, then the lowest ranked employee shall be displaced first. An employee can displace another employee only if the displacing employee has been certified in the class.
(3/30/13)
- B. For those departments with multiple work locations throughout the state, the department shall offer retention rights in the following order:

1. Within a 75-mile radius of the employee's current work location, funded vacant positions in the current certified class.
2. If there are no funded vacant positions in the current certified class, positions occupied by the following types of employees in the current certified class within a 75-mile radius are offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the current certified class within the 75-mile radius, and the occupants of those positions are certified, then the lowest ranked employee shall be displaced first.
3. If there are no available funded vacant or occupied positions in the current certified class within a 75-mile radius, then a funded vacant position in a previously certified class occupied within the last two years at the same maximum pay rate. If there are no funded vacant positions, then positions occupied by the following types of employees shall be offered in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in a previously certified class at the same maximum pay rate and the occupants of those positions are certified, then the lowest ranked employee shall be displaced first.
4. If there are no available funded vacant or occupied positions in the current or a previously certified class at the same maximum pay rate within a 75-mile radius, then the highest level demotion within a 75-mile radius in a vacant position in the current or a previously certified class series occupied within the last two years. If there are no vacant positions, positions occupied by the following types of employees shall be offered in the current or a previously certified class series in the following order: provisional, probationary, conditional, certified. If there are multiple occupied positions in the current or a previously certified class series within the 75-mile radius, and the occupants of those positions are certified, then the lowest ranked employee shall be displaced first. An employee can displace another employee only if the displacing employee has been certified in the class.
5. If the only retention opportunity within a 75-mile radius is a demotion, then in addition to the offer of that demotion, the employee may be given retention rights outside of the 75-mile radius to a position in the current certified class. (3/30/13)

Board Rule 7-19. If the employee accepts an offer outside the 75-mile radius, that employee can claim moving expenses as prescribed in fiscal rule. (3/30/13)

Reallocation

- 7-20. If a position is allocated downward and the employee elects not to remain in the position or if a position is allocated upward and the employee does not qualify, is not appointed or elects not to remain in the position, the employee will be laid off or, if eligible, given

retention rights pursuant to the provisions of this chapter. If a certified employee is laid off or demoted due to an upward or downward allocation or layoff, the employee is placed on a departmental reemployment list. If an employee refuses a retention offer, the employee is laid off and placed on the departmental reemployment list. (3/30/13)

Appeals

Board Rule 7-21. All employees whose positions have been eliminated or who have been upwardly or downwardly allocated to a different class in the course of a layoff shall have a mandatory right to a hearing before the State Personnel Board. Acceptance of retention rights to another position does not eliminate the employee's appeal rights. (3/30/13)

Recordkeeping

Board Rule 7-22. Department heads must provide any required or requested information to the Director or Board in a timely manner. (3/30/13)