

**DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT**

BULLETIN NO. 4

SEPTEMBER 2006 (Revised)

Bulletin No. 4 revises and replaces Old Bulletin No. 4 issued September 1984.

**GRIEVANCE SYSTEM FOR
PERSONNEL OUTSIDE BARGAINING UNITS**

The District of Columbia Fire Department has adopted the attached in accordance with District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-135) and Chapter 16 of the District Personnel Manual (DPM) for personnel outside of bargaining units.

Section 1. Fire Department Responsibility for Grievances

Chapter 16 provides an avenue whereby an applicant, former employee or employee of D.C. Fire and EMS may seek personal relief in matters of concern or dissatisfaction which are subject to the control of management. Each grievant or witness involved in the grievance process shall be free from restraint, coercion, interference, discrimination, or reprisal by any official of the agency for the act of filing or supporting a grievance.

1. The Fire Department will do the following:
 - (a) Give each grievance full, impartial and prompt consideration; and
 - (b) Make copies of the grievance procedures available upon request to all employees, former employees, and applicants for employment.
2. The Fire Department shall assure that, in the presentation of a grievance, an employee, former employee, or applicant for employment shall:
 - (a) Be assured freedom from restraint, coercion, interference, discrimination, or reprisal; and
 - (b) Subject to the provisions of Section 6 of this procedure, have the right to be accompanied, represented, and advised by representative of his or her own choice.

Section 2. Supervisors' Responsibility

Since it is expected that the majority of employee complaints and grievances can be resolved informally between employees and supervisors, it is mandatory that employees first pursue such matters informally as prescribed elsewhere in this section. Supervisors are encouraged to make a

good faith effort to resolve the grievance. The importance of prompt and sincere efforts to informally resolve such matters cannot be over-emphasized because of the savings in time and expense, and even more important, its effect on employee morale.

Section 3. Applicability

1. This procedure applies to all applicants, former employees and current employees who are not in the bargaining units of Local 36 International Association of Firefighters and Local 3721 American Federation of Government Employees.
2. Personnel may **NOT** grieve the following:
 - (a) Any action implemented to comply with a decision by the Office of Employee Appeals, the Merit Systems Protection Board, an arbitrator of competent jurisdiction, the Office of the Inspector General, the Executive Office of the Mayor, the Office of Human Rights, the Commission on Human Rights, a court of competent jurisdiction, or any other agency authorized by law to mandate a particular action;
 - (b) Any action terminating an employee's temporary promotion that returns the employee to the position from which the employee was temporarily promoted or to a different position that is not at a lower grade or level than the position from which the employee was temporarily promoted;
 - (c) Expiration of an appointment with a specified time limit;
 - (d) Forfeiture of position due to failure to maintain bona fide District residency, or to meet the residency or domicile requirements, respectively, as provided in Chapter 3 of these regulations;
 - (e) Termination or discipline of an employee serving a probationary period as provided in Chapter 8 of these regulations;
 - (f) The return or assignment to the position from which promoted or to an equivalent position of an employee who does not successfully complete a supervisory probationary period pursuant to Chapter 8 of these regulations;
 - (g) Termination or discipline prior to the expiration date of a temporary appointment;
 - (h) Voluntary action initiated by, or at the request of, the employee;
 - (i) Conversion of any position to the Management Supervisory Service or the Excepted Service;
 - (j) Reduction of an employee's rate of pay from an erroneous rate;

- (k) Termination of pay retention, as that term is defined in Chapter 11 of these regulations, by action in accordance with reclassification procedures or reduction-in-force procedures pursuant to, respectively, Chapters 11 and 24 of these regulations;
- (l) A decision declining to waive repayment of an erroneous payment under DC Official Code § 1-629.01.
- (m) Termination of a term promotion upon completion or termination of the assigned project, and the return of the employee to the position from which promoted or to a different position of equivalent grade and pay;
- (n) An action implemented to comply with any law, rules or regulations established under the District of Columbia Administrative Procedure Act;
- (o) Any other matter for which no District government agency has the power or authority to provide the remedy sought or an equivalent remedy;
- (p) Designation as a “management employee” or a discretionary decision to grant or not grant any retreat from the Management Supervisory Service to another service pursuant to DC Official Code § 1-609.54;
- (q) An allegation of unlawful discrimination, or any other matter within the jurisdiction of the Office of Human Rights;
- (r) An allegation of an unfair labor practice, or any other matter required to be decided by the Public Employee Relations Board;
- (s) A final agency decision which, pursuant to DC Official Code § 1-606.03(a), may be appealed to the Office of Employee Appeals;
- (t) A grievance required to be submitted through the grievance procedures contained in a collective bargaining agreement covering the employee;
- (u) Non-selection for any competitive or non-competitive appointment or promotion from a group of candidates who were properly qualified, ranked, or certified;
- (v) Performance evaluations conducted under the provisions of Chapter 14 of the DC personnel regulations, under which employees may seek review of the performance evaluation;
- (w) The application or coverage of the Fair Labor Standards Act;
- (x) A prior grievance dismissed with prejudice;

- (y) The disallowance of an employee's representative pursuant to this chapter; or
 - (z) Non-adoption of a suggestion that may benefit the District government, or failure to receive an incentive award or a specific amount for a monetary award, pursuant to Chapter 19 of these regulations.
3. All matters not listed above may be grieved through this grievance procedure.

Section 4. Time Limits for Filing

1. Except as provided in paragraph 2 below, personnel filing a grievance shall present the grievance within 45 days, not including Saturdays, Sundays, and legal holidays, after the date that he or she knew or should have known of the act or occurrence that is the subject of the grievance.
2. An employee shall file a disciplinary grievance or a grievance of enforced leave that lasts less than 10 days within 10 days of the receipt of the final decision on the corrective action or the enforced leave.

Section 5. Official Time

1. If otherwise in a duty status, each employee submitting a grievance under the provisions of this chapter may be granted a reasonable amount of official time, not to exceed 10 hours, for preparation or presentation of the grievance.
2. Each absence from duty in excess of the time granted shall be charged in accordance with Chapter 12 of the DPM.

Section F. Employee Representative

1. When an employee designates another employee of the agency as his or her representative, that representative shall have the same rights as the employee in regard to the following:
 - (a) Freedom from restraint, coercion, interference, discrimination, or reprisal; and
 - (b) The same amount of official time as the employee if he or she is otherwise in an active duty status.
2. The agency shall have the right to disallow the representative for the following reasons:
 - (a) The employee's choice of another agency employee as his or her representative if that choice conflicts with priority needs of the government; and

- (b) Any selection the employee makes with regard to a representative on the grounds of a clear conflict of interest or conflict of official position.
- 3. The employee shall have the right to challenge the decision to disallow his or her choice of representative to the Fire/EMS Chief or his designee and to obtain a decision before proceeding with the grievance.
- 4. The decision by the Fire/EMS Chief, or by the person designated the by the Fire/EMS Chief to disallow the employee's choice of representative shall be made no later than ten (10) days after receipt of the employee's challenge, shall be set forth in writing, and shall be made a part of the record.
- 5. The decision to disallow an employee's choice of representative shall not be subject to any further administrative review.

Section 7. Informal Grievance Procedure

- 1. An employee, former employee and applicant may present a grievance concerning a continuing practice or condition at any time to the agency.
- 2. An employee, former employee and applicant in presenting a grievance, is entitled to communicate with and seek advice from:
 - a. Servicing Personnel Cluster and
 - b. Supervisory or management official of higher rank than the grievant's supervisor.
- 3. Management shall attempt to resolve the grievance, advise the grievant if management cannot resolve the grievance in a manner acceptable to the grievant and advise the grievant of his or her right to file a formal grievance.
- 4. The informal grievance may be presented either orally or in writing.
- 5. An informal grievance is to be decided at the level of management by the lowest level official with authority to grant the relief sought.
- 6. A decision on an informal grievance should be rendered as quickly as possible, but must be rendered not later than twenty (20) days from the date the grievance was received. This twenty (20) day period shall be tolled during the time of any challenge under Section F, Paragraph 3.
- 7. Failure to grant any part of the relief sought shall constitute a denial of that part of the informal grievance.

Section 8. Formal Grievance Procedure

1. An employee shall be entitled to present a grievance under the formal procedure as follows:
 - (a) The employee has not received a decision under the informal grievance procedure within the time specified in Section 7, paragraph 6 above; or the employee has been denied the relief sought under the informal grievance procedure as provided in Section 7, paragraph 7 above; and
 - (b) The employee files the formal grievance within ten (10) days after expiration of the time for decision or receipt of notification of denial of the relief sought.
2. The grievance shall be in writing, shall contain sufficient detail to identify and clarify the basis for the grievance, and shall specify the relief requested.
3. The grievance must be presented to an official (hereinafter referred to as the “grievance official”) who has the authority to grant the relief sought.
4. If the grievance is a disciplinary grievance or a grievance of enforced leave, the grievance shall be presented to the grievance official, who shall be an official who is at a higher administrative level than the deciding official on such actions.
5. The grievance official shall attempt to settle the grievance through mediation or any other similar procedure. If the grievance is settled, both parties may agree to dismiss the action.
6. In the case of a disciplinary grievance, the grievance official shall either sustain, reduce, or dismiss the penalty imposed by the final decision, but in no event shall increase the penalty.
7. If the relief requested has been denied in whole or in part, the grievant shall be advised of the basis for the denial.
8. The decision of the grievance official to deny the grievance, in whole or in part, shall be the final administrative decision, and shall not be subject to further administrative appeal.
9. The decision on the grievance shall be issued not more than thirty (30) workdays from the date the grievance was filed.
10. The grievance official must first determine whether the grievance is timely filed the grievance official may dismiss the grievance with prejudice if it was not filed within time limits specified for filing under the informal or formal procedure or consists of matters excluded from coverage of the grievance system.
11. The notice of dismissal must be in writing and give reasons for the dismissal.

Section 9. Dismissal

1. The Fire Department may dismiss a grievance with prejudice in the following instances:
 - (a) At the employee's request.
 - (b) Upon termination of the employee's employment with the agency, unless the personal relief sought may be granted after termination of employment.
 - (c) Upon the death of the employee, unless the grievance involves a question of compensation.
 - (d) For failure to prosecute, if the employee does not furnish required information or duly proceed with the advancement of his or her grievance.
 - (e) The subject matter of the grievance is not an allowable basis for filing a grievance under these procedures.
 - (f) The grievance was not timely filed.
12. The dismissal of a grievance under the provisions of paragraph (b),(c) and(d) above shall be a final agency decision and shall not be subject to further administrative review.

Section 10. Grievance Format

1. Informal Grievance: Oral or written grievance should have information as shown in Example A.
2. Formal Grievance: Written grievance should have information as shown in Example B.

EXAMPLE A

Memorandum

Government of the District of Columbia

To: Department,
Agency, Office:

FROM:

SUBJECT: Informal Grievance

I am filing this informal grievance in accordance with personnel regulation and the District Personnel Manual.

Optional: I am addressing this grievance to you because I feel that (State Name and Rank) my supervisor will not afford me impartial treatment.

The problem is as follows ...

***Give specific details: dates, names, time, who, what, where, when, why and how.
Attach a continuation, if necessary.***

The relief I am asking is as follows...

Give specific details of the relief sought.

If you do not resolve this grievance within ten (10) days of receiving it, I understand that I have the right to file a formal grievance.

EXAMPLE B

Memorandum

Government of the District of Columbia

TO:

Department,
Agency, Office:

FROM:

SUBJECT: Formal Grievance

This is a formal grievance submitted to you for resolution in accordance with the grievance procedure.

The attached informal grievance was not resolved to my satisfaction in the informal grievance procedure. The particulars of the grievance and response/ forth lack of response in the informal process, are set forth in attachments.

Received by:

Date:

Attachment:

Copy of Informal Grievance
and Responses.

Section 11. Definitions

1. **Days** - calendar days, unless otherwise specified.
2. **Grievance Official**- an official who is authorized by the agency head to grant the relief sought;
3. **Grievance** - any matter under the control of the District of Columbia Fire and EMS Department which impairs or adversely affects the interest, concern, or welfare of employees, including but not limited to a request by an employee for relief concerning a final written decision that involuntarily placed him or her on enforced leave that lasts less than ten days or a request by an applicant for employment for non-monetary relief in matters involving the application of the merit staffing process; or a request for a former employee for relief in a matter of concern or dissatisfaction that is subject to the control of Fire/EMS and that is related to an employment condition. This definition does not include adverse actions resulting in removals, suspension of ten days or more, reductions in grade or enforced leave actions that last ten days or more; reductions in force, or classification matters, nor is it intended to restrict matters may be subject to a negotiated grievance and arbitration procedure in a collective bargaining agreement between the District and a labor organization representing employees.