

[DRAFT FOR COMMENTS ONLY]

DEPARTMENT OF PERSONNEL AND ADMINISTRATION

State Personnel Board and State Personnel Director

STATE PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES

4 CCR 801-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

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

Pursuant to § 24-50-101(3)(b), C.R.S., it is the duty of the State Personnel Board to provide fair and timely resolution of the cases before it. Pursuant to § 24-50-101(3)(c), C.R.S., it is the duty of the State Personnel Director to establish the general criteria for adherence to the merit principles and for fair treatment of individuals within the state personnel system.

Preamble

Unless otherwise noted in a specific provision, the entire body of State Personnel Board Rules were repealed and new permanent rules were adopted by the State Personnel Board on April 19, 2005, pursuant to a Statement of Basis and Purpose dated April 19, 2005. The entire body of the State Personnel Director's Administrative Procedures were repealed and new permanent procedures were adopted by the State Personnel Director on May 5, 2005, pursuant to a Statement of Basis and Purpose dated May 5, 2005.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

This version reflects emergency changes to Chapter 8 Dispute Resolution, Part D, Director's Review of Coverage Designation Disputes, that become effective on December 15, 2020.

These changes are to create Director's Procedures regarding covered / non-covered designation disputes under the Colorado Partnership for Quality Jobs and Services Act, § 24-50-Part 11, C.R.S. become effective as of December 15, 2020.

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Chapter 8 Resolution of Appeals and Disputes

Authority for rules promulgated in Chapter 8, Resolution of Appeals and Disputes, is found in the Colorado Constitution Art. XII §13, § 24-34-402, 24-11-110, 24-50-101, 24-50-103, 24-50-104, 24-50-104.5, 24-50-123, 24-50-125, 24-50-125.3, 24-50-125.4, 24-50-125.5, 24-50-131, 24-50-132, and 24-50.5-101 to 107, C.R.S. Board rules are identified by cites beginning with "Board Rule".

Chapter 8. Part D. DIRECTOR'S REVIEW OF COVERAGE DESIGNATION DISPUTES

8-100. Chapter 8, Resolution of Appeals and Disputes, Part D, Director's Review of Coverage Designation Disputes, applies to employees of the state personnel system. Chapter 8, Resolution of Appeals and Disputes, Part D, does not apply to individuals outside of the state personnel system.

- A. Chapter 8, Resolution of Appeals and Disputes, Part D, only applies to disputes regarding the designation of covered and non-covered employees under the Colorado Partnership for Quality Jobs and Services Act, § 24-50-Part 11, C.R.S., and specifically § 24-50-1102(3)(a)-(f). The term "Director's Coverage Designation Dispute" refers to these disputes. A designation of covered or non-covered is based on the individual's position description and job duties.
- B. Only the department's designated Labor Relations representative or the certified employee organization can request a Director's Coverage Designation Dispute using the Covered/Non-covered Employee Designation Dispute Form found on the Department of Personnel and Administration website.
- C. Nothing in Chapter 8, Resolution of Appeals and Disputes, Part D, is intended to preclude an employee, department, or certified employee organization from asserting an employee's status as covered or non-covered under the Colorado Partnership for Quality Jobs and Services Act as a defense in an Unfair Labor Practice charge.

8-101. Chapter 8, Resolution of Appeals and Disputes, Part D, contains the rules that govern the Director's Coverage Designation Disputes and includes the following:

- Section I: Filing Coverage Designation Disputes with the Director.
- Section II: Resolution of Director's Coverage Designation Disputes.

8-102. Every reasonable effort shall be made by the parties to resolve the issue at the lowest possible level in a timely manner. Informal resolution before initiating the Director's Coverage Designation Dispute process is strongly encouraged.

8-103. All Director's Coverage Designation Disputes brought before the Director may be resolved informally. If a dispute is resolved informally between the parties while a Coverage Designation Dispute is being researched, the parties shall promptly notify the Director and the dispute shall be considered moot and dismissed.

8-104. Retaliation against any person involved in any Director's Coverage Designation Dispute process is prohibited.

Commented [LLF1]: This is not the way unit composition is typically determined. It is by job classification.

Commented [LLF2]: Within 30 days.

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8-105. Confidentiality of Supporting Documents. Supporting documents shall be stored confidentially and only released if a review is filed with the Colorado Department of Labor and Employment, Division of Labor Standards and Statistics or otherwise required by law.

Part D. Section I. Filing Designation Disputes with the Director

8-106. The Coverage Designation Dispute Process. Only the issues identified in the Covered/Non-covered Employee Designation Dispute Form shall be considered by the Director.

A. Internal Stage. The first stage is the department's internal dispute resolution process. Each department shall communicate and administer an internal dispute resolution process. The department's process shall be communicated to all departments' designated Labor Relations representatives and the certified employee organizations. This shall include the following elements:

1. The process for filing a written request for review;
2. The appointing authority at the department who is the final decision maker unless it is delegated in writing and publicized in advance;
3. The time limits for issuing the final written department decision; and
4. Any other specific requirements established by the Director.

B. Internal Stage Conclusion. A department's decision on issues involving an employee's covered designation based on the individual's position description and job duties concludes at the internal stage and no further internal recourse is available.

8-107. Notice of Director's Coverage Designation Dispute Rights. The department's designated Labor Relations representative and certified employee organizations shall be notified by the department, in writing, of the right to dispute a final department's internal dispute decision regarding a covered designation.

A. The notice shall include:

1. A statement setting forth the address of the Director;
2. The requirement that the dispute shall be in writing;
3. The location of the Covered/Non-covered Employee Designation Dispute Form;
4. Filing instructions for supporting documentation; and
5. The requirement to include copies of the original written coverage dispute and the department's final decision of the internal dispute.

8-108. The Director's Coverage Designation Dispute Stage. This external stage is administered by the Director. Only the issues in the original written coverage dispute filed with the department's internal dispute process shall be reviewed by the Director.

A. The Director's Coverage Designation Disputes shall use the Covered/Non-covered Employee Designation Dispute Form.

Commented [LLF3]: We have already engaged the DHRs on who is included and excluded. From mid-September until the end of November the department reviewed and revised their lists. This step should be considered completed for our current dispute resolution purposes.

Commented [LLF4]: There needs to be time limits throughout. The decision must be made within 15 calendar days.

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8-109. Where to file. The Covered/Non-covered Employee Designation Dispute Form and other documents may be filed by hand delivery, U.S. mail, commercial delivery service, facsimile, or via email.

- A. The physical address for filing is State Personnel Director, 1525 Sherman Street, 5th Floor, Denver, Colorado 80203.
 - 1. Normal business hours for the Director are from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for official state holidays or days that state offices in Denver are closed due to weather or safety.
- B. The facsimile number is 303-866-2021. Facsimile filings may not exceed ten (10) pages.
- C. Filings via email.
 - 1. The email address for the Designation Disputes is DPA_LaborRelations@state.co.us.
 - 2. The subject line for the filing via email shall include:
 - a. Department;
 - b. Position Number;
 - c. Case number (if a new Designation Dispute, write "New Designation Dispute"); and
 - d. The phrase "Electronic Filing."
Example: "Department of State AAA12345 (2021-L000) Electronic Filing."
 - 3. The Covered/Non-covered Employee Designation Dispute Form and any relevant documents must be attached to the email as a PDF document. The Director will only consider the contents of the attached documents. The Director will not consider information in the text of the email. The email is not a filing; rather the email is a method for parties to file something with the Director. Nothing in this paragraph precludes the Director from requesting the parties to submit additional documents.
 - 4. As with any filing, the attached filings shall be signed. This can be done by signing the document and scanning the document with the signature. This can also be done by writing or typing "/s/" followed by the filer's full name on the signature block line, so long as the person filing the document signs a paper form of the document and makes that form available for situations where the hearing officer might seek verification of the signature.
- D. Size and format of filings. All documents filed with the Director shall be prepared as follows:
 - 1. 8-1/2" x 11" page size, on plain, white paper (recycled paper preferred);
 - 2. Black type or print;
 - 3. No less than twelve (12) point font, excluding footnotes. Footnotes shall be no less than nine (9) point font;
 - 4. Margins of at least one inch (1") at the top, left, right, and bottom of each page; and
 - 5. If single-spaced, there shall be a blank line between each paragraph.

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PART D. Section II. Resolution of Director's Coverage Designation Dispute

8-111. The Director's Coverage Designation Dispute Decision. The Director's authority regarding final decisions on Director's Coverage Designation Disputes is limited to reviewing the facts surrounding the department's final decision, within the limits of the employee's position description and job duties and how it is applied to a covered or non-covered designation as defined in § 24-50-1102 (3)(a) through (3)(f), C.R.S.

- A. If the department has failed to render a final decision, the designation dispute will be remanded back to the department to issue a final decision to the employee and the certified employee organization.
- B. The Director shall not substitute their judgment regarding the position description or job duties for that of the appointing authority. The Director may overturn the appointing authority's decision about whether the position is covered or not covered under the Colorado Partnership for Quality Jobs and Services Act.
- C. The Director shall not render a decision that would alter an individual's position description or job duties.

8-112. The Director or designee shall issue a written decision within ninety (90) days of receipt of filing.

Commented [LLF5]: This is far too long. Within 30 days is more than enough time.

8-113. The department's designated Labor Relations representative or a certified employee organization may withdraw a Director's Coverage Designation Dispute at any time prior to the Director issuing a final decision. If the Director's Coverage Designation Dispute is withdrawn, it will be considered moot and dismissed.

8-114. Pursuant to § 24-50-1106(4), C.R.S., the Colorado Department of Labor and Employment, Division of Labor Standards and Statistics has jurisdiction to hear final decisions of the Director regarding whether certain employees are appropriately designated as covered or non-covered employees.

8-115. Once a decision by the Director is accepted or affirmed by the Colorado Department of Labor and Employment, Division of Labor Standards and Statistics, it is final unless permanent, material changes are made to the official job description.

COWINS Comments:

1. Generally speaking, there are no timelines in this, with only a 90-day requirement in 8-112. The process could drag on interminably (especially in the internal department stage). We must have timelines for all the stages, with extension upon mutual agreement of the parties.

2. In 8-105, it states documents are confidential. This may be contrary to CORA.

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3. We disagree with the stated standard that the director is limited to “reviewing the facts surrounding the department’s final decision.” This is clearly contrary to the statutory authority of the DPA Director and her constitutional authority. Departments have too much authority to pick and choose who is in our out. It must be based on job classification and the Act.

4. 8-111.A. Failure to render a final decision should be a waiver on the part of the department — you’ll just end up looping back, forever.

5. 8-111.B. Same problem as in no. 2 above. The Director is clearly the ultimate authority on all matters in the personnel system and has the authority to render her own decision, unfettered by department opinions.

6. 6-112. 90 days seems like a long time. You could easily be up to 6 months between a department decision, DPA decision and Division decision. Within 30 days if more than enough time.

It is contrary to the intent of the statute and potentially a ULP or an equal protection issue if departments are literally picking and choosing individual persons to be not covered. For example, why should an administrative assistant III in one division be covered and another in a different division be determined to not be covered. This was never intended to be a provision for departments to pick and choose who is in and out. It should be solely based on classifications and to a lesser degree position descriptions, not individual duties.