

RULE 14
SEPARATION OTHER THAN DISMISSAL

Purpose Statement:

The purpose of this rule is to define the circumstances and processes by which an employee in the Career Service may be separated from employment other than by dismissal (Effective May 7, 2012; Rule Revision Memo 62C).

Section 14-10 Types of Separation Other Than Dismissal

(Revised May 7, 2012; Rule Revision Memo 62C)

- A. The separation of an employee from the Career Service other than by dismissal shall be designated one of the following:
 - 1. Disqualification;
 - 2. Separation of employees holding non-career, trainee or intern probationary, or employment probationary status;
 - 3. Lay-off;
 - 4. Resignation;
 - 5. Retirement;
 - 6. Death.
- B. Written notices required under this Rule 14 shall be served either in person with a certificate of hand delivery, or by first class U.S. mail, with a certificate of mailing.
- C. The personnel action shall show the reason for the separation and the employee's last day as a City employee. The effective date of the separation shall be the day after the employee's last day as a City employee.
- D. Employees who separate from employment with the City shall receive payment for all compensatory time, paid time off, and vacation and sick leave, for which they are eligible according to the provisions of Rule 9 **PAY ADMINISTRATION** and Rule 10 **PAID LEAVE**.
- E. A separation of an employee under this Rule 14 is considered to be a separation without fault. An employee who has been separated under this Rule 14 may be considered for re-employment without examination as provided in Rule 3 **SELECTION**.

Section 14-15 Designees

(Effective May 7, 2012; Rule Revision Memo 62C)

Appointing authorities, including the Office of Human Resources (“OHR”) Executive Director, may delegate any authority given to them under this Rule 14 to a subordinate employee except the authority to sign and submit lay-off plans to the OHR.

Section 14-20 Disqualification

(Revised July 19, 2012; Rule Revision Memo 64C)

Disqualification is an involuntary, no-fault separation of an employee, based on a legal, physical, or mental impairment or incapacity of the employee, occurring or discovered after appointment, which prevents performance of the essential functions of the position.

14-21 Grounds for Disqualification

An employee may be disqualified if any of the following conditions occur:

A. Physical or mental impairment or incapacity:

1. When an employee is unable to perform the essential functions of the position because of mental or physical impairment or incapacity, with or without reasonable accommodation.
2. Before an employee can be disqualified because of a physical or mental impairment or incapacity, the employee’s department or agency must have initiated the interactive process under the Americans with Disabilities Act of 1990 (ADA), as amended (described in Rule 5 **APPOINTMENTS AND STATUS**), and the ADA Coordinator must have concluded the process and referred the employee’s case back to the department or agency without making an accommodation because no reasonable accommodation was available or an offered reasonable accommodation was refused by the employee.

B. Licensure, certification and other legal requirements:

1. When laws require a license, certification, or other authorization by a federal, state or local governmental entity to perform the essential functions of a position and the employee does not have the required authorization.
2. An employee shall be relieved immediately of any duties requiring a license, certification, or other legal authorization if the employee lacks such license, certification, or other legal authorization. If the license, certification, or other legal authorization is required to perform the essential functions of the position, the employee shall be immediately placed on unpaid leave, unless the employee elects to substitute available paid leave for the unpaid leave. The employee's pay or classification shall not otherwise be affected prior to the completion of the disqualification proceedings.

14-22 Procedure

- A. The appointing authority shall follow the procedures for pre-disciplinary meetings before taking any action on the disqualification.
- B. The final notice of disqualification shall contain the same statement of the reason for the disqualification as contained in the pre-disqualification letter. Substantial amendments or additions are permitted only by repeating the pre-disqualification notice and meeting procedure. The final notice shall also contain a notice that the employee may appeal the disqualification.
- C. The appointing authority shall give the employee written notice of disqualification on or before the employee's last day as a City employee.

Section 14-30 Separation of Employees Holding Non-career, Trainee or Intern Probationary, or Employment Probationary Status

(Revised May 7, 2012; Rule Revision Memo 62C)

- A. An employee holding non-career, trainee or intern probationary, or employment probationary status may be separated at any time in accordance with Rule 5 **APPOINTMENTS AND STATUS**. Such separation may only be appealed on the grounds of alleged discrimination or when the employee has alleged a violation of the City's "Whistleblower Protection" ordinance, in accordance with Rule 19 **APPEALS**.
- B. The employee shall be given written notice of separation on or before the employee's last day as a City employee.
- C. Employees holding on-call, trainee or intern probationary, or employment probationary status may also be dismissed as provided in Rule 16 **DISCIPLINE AND DISMISSAL**.

Section 14-40 Lay-off

(Effective August 1, 1980, Rule Revision Memo124A; Revised March 19, 2004, Rule Revision Memo 247B)

14-41 Definition

The separation of a Career Status, unlimited employee or a limited employee appointed prior to January 16, 2004 from the Career Service resulting from the abolishment of a position (Revised March 19, 2004; Rule Revision Memo 247B).

14-42 Order of Lay-off

- A. Lay-off unit: Lay-offs shall be determined by lay-off unit. Lay-off units are appropriation accounts, appropriation sub-accounts, combinations of appropriation sub-accounts, or combinations of appropriation accounts which have been consolidated or de-consolidated in accordance with paragraph 14-42 B Consolidation of appropriation accounts (Revised March 19, 2004; Rule Revision Memo 247B).
- B. Consolidation of appropriation accounts:
1. The Career Service Board ("Board") may consolidate appropriation accounts or appropriation sub-accounts within a department into one lay-off unit if it can be shown that there is a high correlation between the activities of one unit of the department and others proposed to be consolidated (Revised March 19, 2004; Rule Revision Memo 247B).
 2. The Board may reverse the consolidation of appropriation accounts or appropriation sub-accounts making up one lay-off unit, or break a lay-off unit consisting of one appropriation account into sub-accounts or combinations of sub-accounts, based on business functions demonstrated by the department or upon a showing that circumstances giving rise to the consolidation are no longer applicable (Revised March 19, 2004; Rule Revision Memo 247B).
 3. A request for such consolidation or de-consolidation of appropriation accounts may be initiated by appointing authorities, employees, or the OHR Executive Director and shall be determined by the Board only after interested parties have been given an opportunity to be heard in accordance with Rule 2 **OFFICE OF HUMAN RESOURCES**.
 4. Changes to lay-off units must be approved a minimum of forty-five (45) days prior to the effective date of the lay-off (Revised March 19, 2004; Rule Revision Memo 247B).
- C. Appointing authority designates positions: The appointing authority shall determine the number of positions by class which are to be abolished within the lay-off unit.

D. Relation of positions to incumbents in lay-off: When lay-off is involved, there is no relation between the positions which are abolished and the incumbents of those positions. The order of lay-off is according to this Rule 9.

E. Establishment of lay-off groups: After separating all non-Career status employees and abolishing all vacant positions in the class, the appointing authority shall divide the employees in the class where positions are being abolished into the following groups:

Group A - Employees whose total length of service is up to five years;

Group B - Employees whose total length of service is five years and up to ten years;

Group C - Employees whose total length of service is ten years and up to fifteen years;

Group D - Employees whose total length of service is fifteen (15) years and above (Revised March 19, 2004; Rule Revision Memo 247B).

These lay-off groups are for the purpose of determining proficiency adjustments as covered in paragraph 14-44 C Effect of proficiency.

F. Effect of special qualification on lay-off group: When an employee possesses a significant and unique skill which cannot readily be learned by another employee and which is essential for the performance of the duties of the position, the OHR Executive Director, after thorough review and investigation, may determine that the possession of such a skill shall constitute an exception for lay-off purposes only; provided, however, that should another employee possess such a skill, such employee scheduled to be laid off shall displace the incumbent.

14-43 Length of Service

A. General rule: For lay-off purposes, length of service shall mean the total number of years, months, and days of continuous service in any class under career service. This computation shall include time on leave, including unpaid leave, but shall not include service in any on-call position.

- B. Additional length of service credits from military service: Pursuant to the Colorado Constitution, Article XII, Section 15 (See Appendix), military service shall be added to the length of service for lay-off purposes under the following conditions (Effective May 4, 2007, Rule Revision Memo 18C):
1. General provision on military service credits eligibility: The amount of military service credited shall be the total number of years, months, and days served in the following situations, other than for training purposes:
 - a. Service in any branch of the armed forces of the United States during any period of any declared war or any undeclared war or other armed hostilities against an armed foreign enemy; or
 - b. Service on active duty in any such branch in any campaign or expedition for which a campaign badge is authorized (Revised March 19, 2004; Rule Revision Memo 247B).
 2. Other provisions regarding military service credits:
 - a. For employees who have completed twenty (20) or more years of active military service, no military service shall be counted in determining length of service for lay-off purposes.
 - b. For employees who have completed less than twenty (20) years of active military service, eligible military service credits shall not exceed ten (10) years.
 - c. Employees who were granted leave of absence without pay for the purpose of serving on active military duty as defined in paragraph 14-43 B Additional length of service credits from military service shall not be credited with military service time, but shall have the leave of absence without pay included in determining their length of service.
 - d. To be eligible for military service credits, employees must have been separated from such service under honorable conditions (Revised March 19, 2004; Rule Revision Memo 247B).
 - e. Employees whose spouse died while serving or as a result of a service-connected cause are also eligible for military service credits as defined and limited above (Revised March 19, 2004; Rule Revision Memo 247B).
 3. Proof of eligibility for military service credits: Proof of eligibility for military service credits shall be established in accordance with the provisions of Article XII, Section 15 (2) of the Colorado Constitution (Effective May 4, 2007, Rule Revision Memo 18C).

- C. Former Merit System employees: Employees transitioned from the merit system to Career Service under the Human Services Department transition charter amendment effective January 1, 1999 shall be given credit for continuous service as follows:
1. At the time of the lay-off, employees who are assigned to the Department of Human Services and have been continuously assigned to said department since January 1, 1999 shall have their length of service calculated from the date the employee was employed with the merit system.
 2. After January 1, 1999, employees who voluntarily transfer to another department in the city shall have their length of service calculated from the date of continuous service with the City and County of Denver, provided that employees who involuntarily transfer to another department shall have their length of service calculated pursuant to the previous subparagraph (Revised March 19, 2004; Rule Revision Memo 247B).
- D. Election Commission transition: Election Commission employees who are appointed to Career Service Election Division positions pursuant to the charter amendment effective July 16, 2007 shall be given credit for continuous service as follows:
1. At the time of the lay-off, employees who hold positions in the Election Division and have been continuously employed in this agency since July 16, 2007 shall have their length of service calculated from the date the employee's continuous service in a full or part-time position with the City began.
 2. After July 16, 2007, Election Division employees who voluntarily accept an appointment to a position in another department in the City shall have their length of service calculated from the date of continuous service with the Career Service, provided that employees who are involuntarily moved to another department shall have their length of service calculated pursuant to the previous subparagraph (Effective June 8, 2007; Rule Revision Memo 19C: Revised May 31, 2011; Rule Revision Memo 53C).

- E. Office of Telecommunications transition: Employees of the Office of Telecommunications as of July 31, 2011, who are subsequently appointed to Career Service positions in Technology Services shall be given credit for continuous service as follows:
1. At the time of the lay-off, such employees who hold positions in Technology Services and have been continuously employed in this office since August 1, 2011 shall have their length of service calculated from the date the employee's continuous service in a full or part-time position with the City began.
 2. After August 1, 2011, such employees of Technology Services who voluntarily accept an appointment to a position outside of Technology Services shall have their length of service calculated from the date of continuous service with the Career Service, provided that employees who are involuntarily moved to another department shall have their length of service calculated pursuant to the previous subparagraph (Effective May 31, 2011; Rule Revision Memo 53C).

14-44 Sequence of Lay-offs

- A. General: Unlimited employees and limited employees appointed to their positions before January 16, 2004 in Group A shall be laid off before employees in Group B, employees in Group B before employees in Group C, etc.
- B. Effect of military service credits: Employees eligible for military service credits, who have the same or greater length of service, shall be placed higher in rank order than employees who are not eligible for military service credits.
- C. Effect of proficiency:
1. Employees eligible for military service credits shall have their rank order determined solely on the basis of seniority.
 2. Within lay-off groups, the appointing authority may choose to rank employees on their knowledge, skills, abilities, expertise and/or documented performance ("proficiency") and place employees with greater proficiency above employees with longer length of service who are not eligible for military service credits. In no event may a more proficient employee be placed higher than an employee with longer length of service who is eligible for military service credits. The OHR must review and approve the criteria and procedures used to determine proficiency as part of its responsibility to audit and approve the lay-off plan as set forth in paragraph 14-46 B (Revised March 19, 2004; Rule Revision Memo 247B).
 3. Within lay-off groups, the appointing authority may place below employees with the lesser length of service the less proficient employee. In no event, however, shall an employee eligible for military service credits be placed lower than an employee with lesser length of service.

14-45 Actions In Lieu of Lay-off

- A. Reassignment or transfer appointment: An employee selected to be laid off shall be given a transfer appointment to any vacancy for which qualified within the lay-off unit, subject to paragraphs 14-45 C, D and E (Revised March 19, 2004; Rule Revision Memo 247B).
- B. Demotional Appointment
1. General: An employee selected to be laid off shall be entitled to a demotional appointment to an existing position in the same lay-off unit in a class below the employee's present class which is the highest ranking class meeting each of the following conditions:
 - a. The employee possesses the knowledge, skills, ability, and expertise to perform the essential duties of the position;
 - b. The class is in the same class series as the employee's present class, or the employee previously held a position in such class; and
 - c. The employee's total length of service as defined in subsection 14-43 Length of Service must be greater than that of at least one (1) of the incumbents in the class; or there must be a vacancy in the class (Revised March 19, 2004; Rule Revision Memo 247B).
 2. Effect on incumbent of position to which demotional appointment is made: When it has been determined that a demotional appointment to a filled position in the lay-off unit which meets the criteria in subparagraph 14-45 B.1 General, should take place, the person in the class of such position who has the shortest length of service as defined in subsection 14-43 Length of Service shall be the employee who is laid off. The employee in the lower class shall be entitled to actions in lieu of lay-off pursuant to this subsection 14-45.
- C. Effect of special qualifications: If a vacancy in a position in a pay grade with the same job rate, or if the position in the class to which such employee is to be given a demotional appointment, is one which requires a special skill as defined in paragraph 14-42 F Effect of special qualification on lay-off group, The OHR Executive Director, after thorough review and investigation, may designate the possession of such skill as a qualification for a demotional appointment to that position.
- D. Effect of position type: If the person designated to be laid off holds a full-time unlimited position, and the position which meets the provisions of paragraphs 14-45 A or B.1 is a part-time, on call, or limited position, the employee shall be offered a choice of the part-time, on call, or limited position, or the highest available full-time unlimited position meeting the qualifications of paragraph 14-45 B.1, for which qualified.

- E. Reassignment to limited position: If there are limited positions in the same class in the lay-off unit, an employee selected to be laid-off shall be given the choice of being reassigned to a limited position in lieu of lay-off, even though it is necessary to separate another employee from that position. This offer shall be made regardless of the length of service of the employee in the limited position, if appointed after January 16, 2004. This reassignment shall not result in removal of the employee from the re-instatement list or lists (Revised March 19, 2004; Rule Revision Memo 247B).

- F. Voluntary action in lieu of lay-off: Employees who demote to a position other than the one described in paragraph 14-45 B or who resign during a period of agency lay-offs, and these actions occur prior to the actual lay-off date, may retain their re-instatement rights pursuant to the following procedure:
 - 1. All demotions and separations during periods of lay-off will be examined to determine the causes of the transaction. Appointing authorities are asked to aid this process by entering an appropriate statement in the Remarks Section of the Personnel Action when a voluntary demotion or separation is the direct result of current lay-off proceedings.

 - 2. If the OHR determines that the demotion or separation is in lieu of lay-off, it will place the employee's name on the appropriate re-instatement list.

 - 3. Such actions in lieu of lay-off shall be considered to be voluntary actions and pay shall be set in accordance with the provisions of Rule 9 **PAY ADMINISTRATION** governing voluntary demotions (Revised March 19, 2004; Rule Revision Memo 247B; Revised April 1, 2006; Rule Revision Memo 7C).

14-46 Notice of Lay-Off

(Revised May 7, 2012; Rule Revision Memo 62C)

- A. Lay-off planning: Lay-off planning, including actions in lieu of lay-off, is the responsibility of the appointing authority. However, the OHR is available for procedural assistance and consultation as soon as the appointing authority has decided the number of positions by class to be abolished.

- B. Audit and approval of lay-off plan: Before an official notice of lay-off is given in accordance with this Rule 14, a written lay-off plan for the lay-off unit signed by the appointing authority shall be submitted to the OHR and shall have been audited and approved in writing by the OHR Executive Director for conformance to Section 14-40 Lay-Off of these rules, including all sub-sections thereof. In the case of a lay-off in the OHR, the lay-off plan shall be signed by the manager responsible for the lay-off unit affected by the lay-off.

- C. Thirty-day notices: The appointing authority shall give final written notice of lay-off to an affected employee a minimum of thirty (30) calendar days before the employee's last day as a City employee. A copy of each such notice shall be sent to the OHR. The period of time shall be computed in accordance with Rule 19 **APPEALS**.

14-47 Re-instatement

(Revised May 7, 2012; Rule Revision Memo 62C)

- A. Re-instatement appointments: The right of a former employee who was laid off, to be re-instated is set forth in Rule 3 **SELECTION**.
- B. Promotional re-instatement appointments: The right of an employee, who was given a demotion in lieu of lay-off, to be re-instated is set forth in Rule 3 **SELECTION**.
- C. Restoration of the balance of sick leave credits upon re-instatement shall be in accordance with Rule 10 **PAID LEAVE**.

14-48 Appeal

(Renumbered May 7, 2012; Rule Revision Memo 62C)

An employee who is laid off or who is demoted in lieu of lay-off may appeal the action in accordance with Rule 19 **APPEALS**.

Section 14-50 Resignation

(Revised May 7, 2012; Rule Revision Memo 62C)

- A. Resignation is the voluntary separation by an employee from the Career Service.
- B. Notice to supervisor: It is the responsibility of an employee who plans to resign in good standing from the Career Service to provide written notice to his or her immediate supervisor at least ten (10) calendar days in advance of the employee's last day as a City employee. The appointing authority may waive this requirement for good and sufficient reasons.
- C. Job abandonment: An employee's failure to report for his or her assigned shift and notify his or her immediate supervisor of the absence prior to the start of his or her shift for three (3) consecutive work days may be called "job abandonment" and treated like a resignation. The required signature of the employee on the resignation shall be waived. Instead, the appointing authority shall file a statement indicating how the conditions of this paragraph have been met.
- D. Appointing authorities are responsible for approving or disapproving employee requests to use paid or unpaid leave (unless otherwise provided in these rules) between the time notice of resignation is given and the employee's last day as a City employee.

14-51 Retirement

Any employee in the Career Service may designate his or her resignation as a retirement when he or she meets the eligibility requirements of the Denver Employees Retirement Plan.

Section 14-55 Death

(Effective May 7, 2012; Rule Revision Memo 62C)

In the case of a separation caused by the death of an employee, the employee's last day as a City employee shall be the date of death.

Section 14-60 Change in Type of Separation

(Revised May 7, 2012; Rule Revision Memo 62C)

When additional facts are revealed that substantially alter the basis for the original decision as to type of separation, the type of separation may be changed. The OHR Executive Director, upon receipt of a written request together with documentation of the reasons for the change, will approve or disapprove the requested change in writing. Only the appointing authority who authorized the personnel action separating the employee, or his or her successor shall be authorized to request a change in the type of separation. A copy of the OHR Executive Director's written approval shall be attached to the personnel action which shall show the type of change and the reason for the change.

APPENDIX 14.A.

**CONSTITUTION OF COLORADO
ARTICLE XII, SECTION 15. VETERANS' PREFERENCE**

- (1)
 - (b) Five points shall be added to the comparative analysis score of each candidate who is separated under honorable conditions and who, other than for training purposes, (i) served in any branch of the armed forces of the United States during any period of any declared war or any undeclared war or other armed hostilities against an armed foreign enemy, or (ii) served on active duty in any such branch in any campaign or expedition for which a campaign badge is authorized.
 - (c) Ten points shall be added to the comparative analysis score of any candidate who has so served, other than for training purposes, and who, because of disability incurred in the line of duty, is receiving monetary compensation or disability retired benefits by reason of public laws administered by the department of defense or the veterans administration, or any successor thereto.
 - (d) Five points shall be added to the comparative analysis score of any candidate who is the surviving spouse of any person who was or would have been entitled to additional points under paragraph (b) or (c) of this subsection (1) or of any person who died during such service or as a result of service-connected cause while on active duty in any such branch, other than for training purposes.
 - (e) No more than a total of ten points shall be added to the comparative analysis score of any such candidate pursuant to this subsection (1).
- (2) The certificate of the department of defense or of the veteran's administration, or any successor thereto, shall be conclusive proof of service under honorable conditions or of disability or death incurred in the line of duty during such service.

- (3) (a) When a reduction in the work force of the state or any such political subdivision thereof becomes necessary because of lack of work or curtailment of funds, employees not eligible for preference under subsection (1) of this section shall be separated before those so entitled who have the same or more service in the employment of the state or such political subdivision, counting both military service for which such preference is given and such employment with the state or such political subdivision, as the case may be, from which the employee is to be separated.
- (b) In the case of such a person eligible for preference who has completed twenty or more years of active military service, no military service shall be counted in determining length of service in respect to such retention rights. In the case of such a person who has completed less than twenty years of such military service, no more than ten years of service under subsection (1) (b) (i) and (ii) shall be counted in determining such length of service for such retention rights.

* * * * *

- (7) This section shall be in full force and effect on and after July 1, 1971, and shall grant veterans' preference to all persons who have served in the armed forces of the United States in any declared or undeclared war, conflict, engagement, expedition , or campaign for which a campaign badge has been authorized , and who meet the requirements of service or disability, or both, as provided in this section. This section shall apply to all public employment examinations, except promotional examination, conducted on or after such date, and it shall in all respects be self-executing.