# GRIEVANCE PROCEDURE MODEL POLICY
## WITH
## OPTIONAL VOLUNTARY MEDIATION
**(Revised and Effective 4/8/2013)**

**THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

## Introduction

The State Employee Grievance Procedure Act (Act) provides that each agency and department of State government shall establish an employee grievance procedure for covered employees which shall be reduced to writing and be approved by the State Human Resources Director. In addition, the approved grievance procedure must be made available to covered employees of the agency. Covered employee is defined as a full-time or part-time employee occupying a part or all of an FTE position who has completed the probationary period and has a "meets" or higher overall rating on the employee's performance evaluation and who has grievance rights. Instructional personnel are covered upon the completion of one academic year except for faculty at State technical colleges upon the completion of not more than two full academic years' duration. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This policy does not apply to non-covered employees (e.g., probationary employees, temporary employees, temporary grant employees, time-limited project employees, research grant employees and employees exempt from the State Employee Grievance Procedure Act).

Employees choosing to file a grievance or appeal must not be disciplined or otherwise prejudiced for exercising their rights or for testifying under the provisions of this policy.

## Grievances and Appeals

As provided for in the Act, and defined in § 8-17-320 of the S.C. Code of Laws, a covered employee may file a grievance or an appeal concerning **only** the following employment actions:

- Terminations;
- Suspensions;
- Involuntary Reassignments in excess of thirty (30) miles from the prior work station;
- Demotions;
- Punitive Reclassifications but only when the agency, in case of a grievance, or the State Human Resources Director, in the case of an appeal, determines that there is a material issue of fact that the action was solely done to penalize the covered

employee. Reclassifications, reassignments, and transfers within the same state salary range are **not** considered to be grievable or appealable.

- Promotions in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. When an agency promotes an employee one organizational level above the promoted employee's former level, however, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is **not** considered an adverse employment action which can be considered grievable or appealable;
- Salary Decrease based on performance as the result of an Employee Performance Management System (EPMS) evaluation; and
- Reduction in Force is considered as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.

## Prior to Filing a Formal Grievance

Prior to filing a formal grievance, the covered employee may first attempt to resolve the matter informally with his immediate supervisor. This matter may be presented verbally or in writing. However, this is merely an informal attempt to resolve the matter and cannot be substituted for the requirements of Step One in the following procedure.

## Procedure

### *Step One*

A covered employee who wishes to file a grievance must initiate the grievance with the agency's Human Resources Office. The grievance must be in writing and must be received (or, if mailed, postmarked) within 14 calendar days of the effective date of the action or 14 calendar days from when the employee is notified of the action, whichever is later. The employee should include a written summary of the facts of the grievance and the relief sought.

The agency's Human Resources Director or other designated official shall initially review the grievance to determine whether the matter involves a grievance as defined by the Act. The agency's Human Resources Director or other designated official may conduct appropriate investigations and fact findings as he may consider necessary to make this determination. If it is determined that the matter is not grievable, the covered employee shall be so advised in writing by the Agency Director or a designee, normally within five (5) calendar days of receipt of the grievance. Such determination shall be a final decision within the agency which may be appealed to the State Human Resources Director.

If it is determined that the matter is grievable, the agency's Human Resources Director or other designated official will contact the covered employee and the appropriate agency representative(s), normally within five (5) calendar days of receipt of the grievance, to inform them the issue can be heard under this grievance procedure and inquire whether or not they desire

to participate in voluntary mediation. Both parties must make a written decision to the agency's Human Resources Director within two (2) calendar days of this notification. Failure by either party to respond timely to this notification is deemed a refusal to participate in the voluntary mediation.

Any initial determination by the agency's Human Resources Director or other designated official that the matter may be grieved shall only entitle the covered employee to have the matter considered in accordance with this grievance procedure and shall in no way be construed to be an adjudication of the merits of the grievance.

***With Mediation:***

When the covered employee and the agency representative(s) both agree in writing to participate in voluntary mediation, the agency's Human Resources Director or other designated official will schedule a mediation conference to occur within five (5) calendar days and make the necessary arrangements for acquiring a mediator. The mediator will serve as an impartial third party who will encourage and facilitate a resolution to the dispute without advising what the result should be. The mediation conference(s) will be confidential and limited to the parties and their representatives. Other persons may attend with the permission of the mediator and the other party. The mediator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation conference in any adversary proceeding or judicial forum. If the parties agree to settle the matter, the mediator will assist in drafting a mediation agreement for the parties to review and sign. The mediator may share terms of the settlement agreement with the agency's designated officials who need to finalize and assist in implementing the agreement. If the matter is not settled within eight (8) calendar days of the initial mediation conference, the mediator will inform the agency's Human Resources Director or other designated official that settlement has not occurred. The agency's Human Resources Director or other designated official will then schedule a conference to occur between the covered employee's next level supervisor and the covered employee within five (5) calendar days. At the conference with the covered employee's next level supervisor, the covered employee will have an opportunity to present his position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his next level supervisor’s decision in writing within five (5) calendar days of the conference.

***Without Mediation:***

If the matter is grievable and the covered employee or the agency submits a written decision not to participate or fails to respond timely concerning voluntary mediation, the agency's Human Resources Director or other designated official will promptly schedule a conference to occur between the covered employee's next level supervisor and the covered employee, normally within five (5) calendar days. At the conference with the covered employee's next level supervisor, the covered employee will have an opportunity to present his position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his next level supervisor's decision in writing within five (5) calendar days of the conference.

***Step Two***

To continue the grievance, the covered employee must notify the Agency Director or a designee in writing. The request to continue the grievance must be received (or, if mailed, postmarked) within five (5) calendar days after receiving the Step One decision. The Agency Director or a designee must promptly schedule and conduct a conference with the covered employee, normally within five (5) calendar days. The covered employee will be provided an opportunity at this time to present his position regarding the grievance. The Agency Director or a designee may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The Agency Director or a designee must advise the covered employee of the decision in writing within five (5) calendar days of the conference. This decision will be final within the agency.

Failure by the agency to issue a final decision within 45 calendar days from date the grievance is initially filed with the agency is considered an adverse decision.

## General Information

Failure by the covered employee to comply with the internal time periods in the agency grievance procedure constitutes a failure to exhaust administrative remedies and waives the covered employee's right to further continue the grievance. The internal time periods of the agency grievance procedure and the 45 calendar day period for action by the agency may not be waived except by mutual written agreement of both parties.

The Act provides that a covered employee has the right during the grievance and appeal process to a representative, which may include legal counsel. If the covered employee chooses to exercise the right of legal counsel, it shall be at his expense.

## Appeals to the State Human Resources Director

The Act also provides for an appeal of a grievance beyond the agency to the State Human Resources Director after **all** administrative remedies to secure relief within the agency have been exhausted. A covered employee has not exhausted administrative remedies to secure relief within the agency until the agency's internal grievance process is completed **or** the 45 calendar days provided for the agency to issue a decision has elapsed, whichever occurs sooner.

Any covered employee may appeal the decision of the Agency Director or a designee. Such appeal must be in writing and submitted to the State Human Resources Director within ten (10) calendar days of receipt of the agency's final decision or 55 calendar days from the initial date the grievance was filed within the agency, whichever occurs later. As to the 55 calendar days, the Act provides that a covered employee may appeal directly to the State Human Resources Director in the event the agency does not complete its entire internal grievance procedure within 45 calendar days from the time the grievance is initially filed within the agency. Failure by the agency to issue a final decision within this 45 calendar day period is considered an adverse decision and allows the covered employee to proceed with an appeal to the State Human Resources Director **after** 45 calendar days, but no later than 55 calendar days from the initial date the grievance was filed within the agency.

Failure by the covered employee to file an appeal within the time periods referenced in this section shall constitute a waiver of the right to appeal.

The time periods related to filing an appeal with the State Human Resources Director may **not** be waived.

## Toolbox Option

As provided for in the State Human Resources Regulations, the following actions do not constitute a basis for a grievance or an appeal:

- a covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions and the covered employee can rescind such voluntary actions only if the agency head or the agency head's designee agrees;
- a covered employee who is promoted and subsequently demoted prior to serving six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a class with a lower salary range than the class in which the employee was serving prior to promotion;
- a covered employee who is promoted and subsequently receives a reduction in pay prior to completing six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to promotion;
- a covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities which justified the salary increase taken away prior to completing six months of service with the additional job duties or responsibilities, shall not have the right to file a grievance or an appeal concerning a salary reduction equivalent to the amount of the additional job duties or responsibilities increase.