

INTERNAL COMPLAINT PROCEDURE
State of Hawaii
Department of Labor & Industrial Relations

1.1 POLICY

Members of the general public and employees shall be afforded an opportunity to lodge internal complaints on personnel actions affecting them and have them addressed in an informal and timely manner.

1.2 SCOPE

This procedure applies to actions (not covered by collective bargaining or other established procedures) that are taken by the Director of Human Resources Development (HRD), the Director of Labor & Industrial Relations (DLIR), or a designee acting on behalf of either relating to:

- A. Recruitment: Actions taken in locating applicants for employment, in receiving applications, or in referring eligible applicants to programs for employment consideration.
- B. Examination: Actions taken in testing an applicant, including the initial probationary period. These may include but are not limited to: written tests, oral tests, interviews, essays, tests of physical fitness or ability, medical examinations, performance tests, training and experience evaluations, background and suitability determinations, in-basket assessment, biodata assessments, personality measures and assessment centers, and terminations for failure to satisfactorily complete the initial probationary period.
- C. Classification/Reclassification: Actions taken in assigning a civil service position to a class based on the kind and level of work performed and knowledge, skills, competencies and qualifications required.
- D. Initial Pricing of Classes: Actions taken in assigning a new class to a pay grade.
- E. Other Employment Actions Adversely Affecting Civil Service Employees who are excluded from participation in collective bargaining: This includes termination, demotion, suspension, failing to meet performance requirements, and any other action if the employee suffers a legal wrong.
- F. Other Adverse Employment Actions That Cannot Be Addressed Through the Collective Bargaining Process: This includes any disciplinary actions taken during an initial probationary period.

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Note: This procedure is not applicable to matters covered by collective bargaining grievance procedures or matters that are covered by established and/or existing procedures (e.g. Premium Conversion Plan procedures).

1.3 PERSONS WHO MAY FILE A COMPLAINT AND TIME PERIODS FOR FILING COMPLAINTS

The following persons shall be entitled to file an internal complaint within the specified period.

- A. Recruitment: Any person who has filed an application for a vacant civil service position or a recruitment program and who alleges an improper recruitment action. The complaint shall be filed within seven (7) working days after the date of the notice of the recruitment action.

- B. Examination:
 - 1. Any applicant who receives notification of failure to meet minimum qualifications for the class and/or position or public employment requirements for which a formal application was filed;
 - 2. Any applicant who receives notification of an unsatisfactory examination score;
 - 3. Any applicant who receives notification of non-selection for a civil service position;
 - 4. Any applicant who receives notification of unsuitability for public employment and/or a specific class of work applied for; or
 - 5. An included or excluded employee serving an initial probationary appointment in a civil service position who is disciplined or terminated for failure to successfully complete the initial probationary period.

The complaint shall be filed within seven (7) working days after the date of the notice of the examination action.

- C. Classification/Reclassification: The civil service employee occupying the position as of the effective date of the classification action and any subsequent civil service employee in the position up to the date of the notice of final action who believes the classification action was improper.

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The complaint shall be filed within twenty (20) working days after the date of the notice of the classification or reclassification action issued by the office taking the action.

- D. **Initial Pricing of Classes:** The civil service incumbent of a position in a new class as of the effective date of the initial pricing action who alleges an improper pricing action. The complaint shall be filed within twenty (20) working days after the date of the notice of the pricing action issued by HRD.
- E. **Other Employment Actions Adversely Affecting Excluded Civil Service Employees:** Any civil service employee who is excluded from collective bargaining coverage under §89-6, Hawai'i Revised Statutes, who alleges improper termination, demotion, suspension, performance evaluation action, or any other employment action that the employee believes is a legal wrong. The complaint shall be filed within ten (10) working days after the date of the notice of the final adverse action.
- F. **Other adverse employment actions taken on an employee that cannot be grieved through the collective bargaining grievance process:** Any employee who believes that his/her rights have been violated who cannot grieve the action through the collective bargaining process or who is ineligible to file a grievance through the collective bargaining process. The complaint shall be filed within ten (10) working days after the date of the notice of the final adverse action.

1.4 GENERAL REQUIREMENTS FOR FILING AN INTERNAL COMPLAINT

- A. All internal complaints shall be typed or legibly hand-written on the complaint form shown in Attachment A. The complaint shall be filed with the Departmental Personnel Officer. For the following specific complaints, Attachment A shall be supplemented with:
 - 1. Initial Pricing: DHRD Form 276; or
 - 2. Classification/Reclassification: DHRD Form 259
- B. Upon receipt, the Departmental Personnel Officer shall review the complaint and take appropriate action:
 - 1. Refer and forward the complaint to HRD if the matter is within the authority of the Director of HRD, and notify the complainant accordingly; or

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2. Refer and forward the complaint to the appropriate agency, if known, if it is not within the authority of the Director of HRD or the appointing authority individual, and notify the complainant accordingly; or
 3. Refer and forward the complaint to the appropriate individual at the lowest level who has the authority to act upon the complaint, who shall in turn, notify the complainant; or
 4. Return the complaint to the complainant if the matters are clearly subject to the collective bargaining grievance procedure and not within the jurisdiction of the Merit Appeals Board (MAB) and/or if the employee has already filed a grievance on the matter.
- C. The appropriate individual who has the authority to act shall, within 30 days of receipt, notify the complainant of the progress of the processing of the internal complaint. As soon as practicable thereafter, the internal complaint procedure shall culminate in a written decision by the Departmental Personnel Officer or other appropriate authority who is assigned responsibility for making the final decision on the complaint.
- D. If the complaint is denied and the issues involve matters within the jurisdiction of the MAB, information on filing a formal appeal with the MAB shall accompany the written decision.
- E. If the internal complaint is denied and the issues do not involve matters within the jurisdiction of the MAB, the decision on the complaint shall be final and binding, unless the matter will be within the proper jurisdiction of another body or agency.

1.5 GENERAL PRINCIPLES

- A. If the complainant is not an employee, all proceedings for handling the complaint shall, as far as practicable, be conducted during office hours convenient to the complainant.
- B. If the complainant is an employee, all proceedings for handling the complaint shall, as far as practicable, be conducted during the employee's work hours to permit him/her time off from work with pay.
- C. No complainant shall be coerced, discriminated against, or have reprisals taken against the complainant because he/she filed a complaint.

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- D. A complainant shall have the right to be represented by a person or persons of the complainant's own choosing at any stage in the presentation of the complaint.
- E. The specific time limits and procedures shall be followed in processing all complaints. Any complaint not filed in accordance with this procedure or within the time limits specified within each step shall not be considered. By mutual consent of both the complainant and the Department, any step as provided herein may be waived and/or the time limits within each step may be extended.
- F. This internal complaint process includes any other informal process including those called administrative review.
- G. The Department may waive any requirements.

1.6 APPEALS TO THE MERIT APPEALS BOARD (MAB)

- A. The internal complaint procedure shall be exhausted before an appeal is filed with the MAB.
- B. The MAB will not consider any appeal which encompasses an alleged violation not previously set forth in the internal complaint.
- C. The MAB will consider appeals only on employment decisions taken under Chapter 76, HRS, the Civil Service Law, and only from persons seeking employment or employed in civil service positions.
- D. The MAB's disposition of any appeal shall be final and binding on all affected parties, unless the matter is appealed to circuit court.
- E. If the appeal is not under the jurisdiction of the MAB, but under some other administrative agency or appellate body, the complainant is responsible for filing a timely appeal with the appropriate agency, regardless of whether the internal complaint procedure was used.
- F. Deadlines for filing a formal appeal with the MAB shall be in accordance with MAB Rules:
 - 1. Recruitment and Examination: Within twenty (20) calendar days from the date on the notice of the final action or decision on the internal complaint.

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2. Classification and Reclassification: Within thirty (30) calendar days after the date on the notice of the final action or decision on the internal complaint.
 3. Initial Pricing of Classes: Within thirty (30) calendar days after the date on the notice of the final action or decision on the internal complaint.
 4. Other Employment Actions Adversely Affecting Excluded Civil Service Employees: Within thirty (30) calendar days after the date on the notice of the final action or decision on the internal complaint.
- G. All appeals to the MAB shall conform to all rules and/or procedures of the MAB. In the event of a conflict between this procedure and MAB rules and/or procedures, MAB rules and/or procedures shall control.

1.7 ADMINISTRATIVE REQUIREMENTS

A copy of this procedure shall be easily accessible to all Departmental employees and the general public at the Office of the Director of the Department of Labor & Industrial Relations, the Departmental Personnel Office, and at offices listed in the Personnel Office.

1.8 REFERENCES

Chapter 76, HRS, *Civil Service Law*
Section 89-9(d), HRS, *Matters Excluded from Collective Bargaining*
Section 831-3.1, HRS, as amended, *Relating to Criminal History Record Checks*
Section 14-1-15, HAR, *Definitions*
Section 14-13.01-1, et seq., *Internal Complaint Procedure*
Section 14-21.1-1, et seq., *State Merit Appeals Board*

**Department of Labor & Industrial Relations
Internal Complaint Form**

(Please type or write clearly in ink for each item below. Attach additional pages if necessary.)

Complainant Information:

Name: _____ Bargaining Unit: _____
 Position Number & Title (if currently or formerly employed by State): _____
 Division/Branch/Section: _____
 Mailing Address: _____
 Phone Number: (Home) _____ (Work) _____

Representative's Name, Address and Telephone Number (if any):**Type of Complaint:**

- Recruitment
 Examination (Including Initial Probation)
 Classification/Reclassification (Attach DHRD Form 259)
 Initial Pricing of Classes (Attach DHRD Form 276)
 Other Employment Action Adversely Affecting Civil Service Employees (Excluded)
 Other Adverse Employment Action That Cannot be Processed Through Collective Bargaining Process

A. Cite the specific personnel law, rule, or written policy, which you allege has been misinterpreted, misapplied or violated.

B. Provide a complete statement of facts to support your allegation. Attach copies of any supportive documents (e.g., copy of policy alleged to have been violated, written statements from witnesses and other similar documents).

C. Remedy Sought. How can this complaint be resolved?

Complainant's or Representative's Signature

Date

Submit the signed complaint form, appropriate DHRD forms, if applicable, and supporting documentation to the Departmental Personnel Officer, by hand delivery or mail: Department of Labor & Industrial Relations, Personnel Office, 830 Punchbowl Street, Room 312, Honolulu, Hawaii 96813

FOR OFFICE USE ONLY

Date Received:

Receipt verified by:

REQUEST FOR ADMINISTRATIVE REVIEW
OF CLASSIFICATION ACTION

HRD 259
07/31/03

I. REQUESTOR

Employee Name _____
Name of Representative and organization, if any _____

II. CLASSIFICATION ACTION DISPUTED (Attach copy of HRD-1 and notification letter, if applicable)

Pos. No. _____ Dept. _____

Nature of classification action taken

No Change _____
Class code, Class title, pay grade, bargaining unit, effective date

Reallocation from _____
Class code, Class title, pay grade, bargaining unit

To _____
Class code, Class title, pay grade, bargaining unit, effective date

Date of notice of classification action _____

III. CLASSIFICATION ACTION REQUESTED

Class code, Class title, pay grade, bargaining unit of the requested class, effective date

IV. DUTIES AND RESPONSIBILITIES WHICH JUSTIFY REALLOCATION TO THE REQUESTED CLASS OR A NEW CLASS (attach additional sheets if more space is needed)

Employee Signature _____ Date _____

Union Representative Signature _____ Date _____