

**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 C.R.S. § 24-50-101(3)(b), it is the duty of the State Personnel Board to provide fair and timely resolution of the cases before it. Pursuant to C.R.S. § 24-50-101(3)(c), 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Unless otherwise noted in a specific provision, the entire body of State Personnel Board Rules were repealed and new permanent rules were adopted by the State Personnel Board on April 19, 2005, pursuant to a Statement of Basis and Purpose dated April 19, 2005. The entire body of the State Personnel Director's Administrative Procedures were repealed and new permanent procedures were adopted by the State Personnel Director on May 5, 2005, pursuant to a Statement of Basis and Purpose dated May 5, 2005.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 rulemaking changes to Chapter 8, Resolution of Appeals and Disputes, Part D, Director's Review of Coverage Designation Disputes, that became effective on March 15, 2021. These changes create the alignment of the Board Rules and Director's Procedures with current law.

**Chapter 8 Resolution of Appeals and Disputes**

**Chapter 8. Part D. Director's Review of Coverage Designation Disputes.**

8-100. 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.

8-101. Chapter 8, Resolution of Appeals and Disputes, Part D, Director's Review of Coverage Designation Disputes, applies to decisions about whether certain employees are appropriately designated as covered and non-covered employees under the Colorado Partnership for Quality Jobs and Services Act. Chapter 8, Resolution of Appeals and Disputes, Part D, does not apply to challenges to the exemption of an employee from 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)-(h). 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.

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

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 All Director's Coverage Designation Disputes brought before the Director may be resolved informally or withdrawn. If a dispute is resolved informally between the parties or withdrawn while a Coverage Designation Dispute is pending, the parties shall promptly notify the Director and the dispute shall be considered moot and dismissed with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

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

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 as otherwise required by law.

#### **Part D. Section I. Filing Coverage 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 the internal dispute resolution process established by the Director.

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1. To initiate the department's internal dispute resolution process, the employee shall notify the employee's supervisor or other authorized person in writing. Such notification may be verbal, but must communicate that the employee is initiating the internal coverage designation dispute process.

2. A discussion between the employee and the supervisor or other authorized person shall

occur within ten (10) days of the employee initiating the department's internal dispute resolution process.

- a. The employee may bring a representative, that may or may not be an attorney, to the discussion.
- b. A representative, that may or may not be an attorney, may participate and speak during the discussion but the employee is expected to answer any questions and actively participate.

3. The department shall provide a written decision to the employee no later than twenty-five (25) days after the discussion.

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

A. The notice shall include:

1. A statement setting forth the physical address, email address, website, telephone and facsimile numbers 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.

8-109. Where to file. The Covered/Non-covered Employee Designation Dispute Form and other documents may be filed by hand delivery, United States Postal Service, 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 or by governor order.

B. The facsimile number is 303-866-2021. Facsimile filings may not exceed ten (10) pages.

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C. Filings via email.

1. The email address for the Designation Disputes is [DPA\\_LaborRelations@state.co.us](mailto: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."
- e. Examples: "Department of State AAA12345 (2021-LR-0000) Electronic Filing" or "Department of State AAA12345 (New Designation Dispute) 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.

#### **Part D. Section II. Resolution of Director's Coverage Designation Dispute.**

8-110. The Director has authority to determine whether an employee was properly designated as covered or non-covered under the Colorado Partnership for Quality Jobs and Service Act based on their position description and job duties.

- 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.

8-111. The Director or designee shall issue a written decision within ninety (90) days from receipt of filing.

8-112. Any of the timeframes for completion of the dispute process may be waived or modified if agreed to in writing by both parties, including deferral of action to allow the parties a chance to resolve the issue.

8-113. 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.

8-114. 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 position description.