

## **EMPLOYEE GRIEVANCE PROCEDURE**

The agreed upon Employee Grievance Procedure and Form shall also be available on the Personnel Services website, through the individual departments, and the Union.

Before filing a grievance, be certain to read this entire procedure, including the rules and definitions.

### **Purpose**

It is a mutual obligation on the part of administrative, supervisory and non-supervisory employees of the County of Fresno to provide efficient and continuous services to the public. Employee morale is an important factor in maintaining a high level of public service and the administration has a responsibility to provide an orderly and expeditious method for resolving problems which may arise from working relationships and conditions. This procedure is intended to provide an orderly method for processing grievances in the interest of obtaining a fair and equitable solution.

### **General**

The parties so involved must act in good faith and strive for objectivity, while endeavoring to reach a solution at the earliest date and at the lowest step in the process. The processing of a grievance shall be considered as County business, and the employee and his/her representative shall have reasonable time and facilities allocated. The use of County time shall not be excessive, nor shall this privilege be abused. The aggrieved employee(s) shall have the assurance that the filing of a grievance will not result in reprisal of any nature. A Grievance shall be signed by the affected employee, and a Group Grievance shall be signed by a minimum of two (2) employees affected by the grievance.

Time lines are designed to quickly resolve a grievance. It is realized, however, that on occasions the parties concerned may be unable to comply with the established time lines. In such instances, the time lines may be extended upon the mutual agreement of all parties concerned. Absent such an agreement, grievances filed beyond the fourteen (14) business day time limit, as outlined in Step 1 – Informal Resolution, or beyond the (7) business day time limit, as outlined in Step 2, will not be processed and will be returned to the employee. However, the employee or his/her representative may withdraw the grievance at any time.

## **STEP 1: INFORMAL RESOLUTION**

When an employee becomes aware that a problem exists, the employee shall discuss the matter informally with the lowest ranking immediate supervisor whose job classification is not included in the same certified representation unit. This discussion shall be sought by the employee not later than fourteen (14) business days after the alleged problem occurred or was discovered. The provisions outlined in Steps 2 and 3 do not act to restrict the employee or the immediate supervisor from seeking advice and counsel when it appears that settlement can be reached informally. The immediate supervisor will respond in writing to the employee within fourteen (14) business days of their discussion with the employee.

## **STEP 2: DEPARTMENT REVIEW**

If a mutually acceptable solution has not been reached during Step 1, and the employee wishes to pursue the grievance formally, the employee shall file it in writing on the Employee Grievance Resolution Form to the Department Head, or designee, with a copy to the Labor Relations Division, no later than the end of the seventh (7th) business day after the supervisor's written response. The Department Head, or designee, will give notice and hear the grievance, which may include a meeting with the employee, and render a written decision within fourteen (14) business days of receipt of the formal grievance from the employee. The written decision shall include a clear and concise statement including the reason(s) for the decision.

The intent of Step 2 is to identify why the employee filed a grievance and facilitate communication and resolution. The goal is to clearly identify issues and areas of agreement/disagreement and to have the parties present whatever available information/documentation necessary to fully attempt to resolve the grievance. Therefore, further clarification of the problem may be necessary and a clear and concise statement of the issue shall be developed.

The process that may be followed at Step 2 is dependent on the nature of the grievance and may include, but is not limited to, the following: referring the grievance to Step 3 if the grievance is outside of department head's authority, as determined by the department in consultation with Labor Relations Division; setting up a conference/meeting with involved parties to discuss the grievance, including Labor Relations staff if necessary; referral of the employee or their representative to another department manager/supervisor.

## **STEP 3: LABOR RELATIONS REVIEW**

Grievances unresolved at Step 2, or grievances involving matters outside the department head's authority, or grievances involving employees working in separate departments may be submitted to the Labor Relations Division for resolution. If the grievance has been reviewed at Step 2, the Labor Relations Division will attempt to mediate the grievance. If it has been referred directly to the Labor Relations Division, without having gone through Step 2, the Labor Relations Division will review the grievance, render a written response to the grievance, and will send the response to the employee or their representative (as indicated on the grievance form). A request for Labor Relations Review must be received by Labor Relations Division within seven (7) business days of the completion of Step 2 – Department Review, or within seven (7) business days of the completion of Step 1 – Informal Resolution for grievances involving matters outside the department head's authority, or involving employees working in separate departments.

In the latter instance, the intent, consistent with Step 2, is to identify issues and areas of agreement/disagreement and to have the parties present whatever available information/documentation necessary to fully attempt to resolve the grievance. Therefore, further clarification of the problem may be necessary and a clear statement of the issue shall be developed.

All processing of the grievance at Step 3 shall be completed within fourteen (14) business days of receipt of the request for Labor Relations Review, unless mutually waived.

#### **STEP 4: MEDIATION**

Grievances unresolved at Step 3 may be submitted to Mediation upon written request by the employee, or their representative, to the Labor Relations Division within seven (7) business days of the completion of Step 3 - Labor Relations Review. Should mediation be requested, the parties shall obtain the services of a mediator from the State Mediation and Conciliation Service in an effort to mediate a grievance resolution before Step 5 - Arbitration can be pursued. The parties shall not divulge in any form the offers made in mediation.

#### **STEP 5: ARBITRATION**

Grievances unresolved at Step 4 may be submitted to arbitration. If a grievance is not resolved through mediation, the employee, or their representative, shall contact State Mediation and Conciliation Services within seven (7) business days following mediation, to obtain a list of persons willing to serve as Arbitrator, with a copy to the Labor Relations Division. The cost of the Arbitrator shall be borne equally between the employee, or their representative, and the County.

A pre-hearing conference with the Arbitrator and the parties shall be set on the day of the hearing immediately preceding the hearing. The purpose of the conference is to identify issues to be resolved and remedy(ies); jurisdiction, or grievability; stipulate to uncontested facts and documents; to identify whether or not the potential decision can be implemented or is appealable; to review the process and conduct of the hearing; and to identify any potential problems. The Arbitrator shall state in writing their factual findings and reasons for their decision within thirty (30) business days of the hearing, if possible.

#### **IMPLEMENTATION**

If the remedy requested by the employee can be implemented by the Department Head the decision of the Arbitrator is final and subject to judicial review as set forth below. If the remedy requested by the employee cannot be implemented by the Department Head but requires action by the Board of Supervisors, the Arbitrator shall issue a recommendation to the Board of Supervisors. The recommendation will be submitted for consideration by the Board of Supervisors at their next regularly scheduled public meeting. The action of the Board of Supervisors shall be final and binding.

#### **JUDICIAL REVIEW**

Final decisions of the Arbitrator may be submitted to the Superior Court for judicial review by either the County or the employee. A party desiring to reserve the right to appeal the Arbitrator's decision in a court of law pursuant to these rules has the burden of preserving the record of the hearing. A party who plans to use a court reporter shall inform the other party within three (3) business days of the hearing to avoid duplication of costs. Appeal from decisions by the Arbitrator shall be on the record of the Arbitrator's hearing by administrative mandamus under California Code of Civil Procedure Section 1094.5, which appeal shall be filed within ninety (90) calendar days after the decision.

## Explanation of Rules

1. Except where a remedy is otherwise provided for by County Charter, Civil Service Commission rules, or law, any employee shall have the right to present a grievance arising from his employment in accordance with the rules and regulations of this procedure. Grievances filed that are pursuant to another administrative remedy, e.g. discrimination complaint procedure, shall be returned unprocessed with an explanation for the decision.
2. The aggrieved employee shall have the right to be represented or accompanied by a person of the employee's choice if the complaint is not resolved at the informal level as provided for in Step 1 of the grievance procedure. This representation may commence when the grievance is presented in writing to the Department Head, or designee, as provided in Step 2 of the grievance procedure.
3. Failure by the aggrieved employee to abide by the prescribed time limits at any phase shall terminate the grievance process and the matter shall be deemed resolved. The County shall abide by the prescribed time limits; failure to do so will result in the grievance being automatically moved to the next phase of the grievance procedure, unless the next step is Arbitration.
4. When two or more employees experience a common grievance, they may initiate a single grievance. The aggrieved employees must sign the grievance form. The initial hearing of the grievance shall be by the Department Head or designee. If the employees work in separate departments, the grievance shall be referred immediately for a Labor Relations Review.

## Definitions

Arbitrator - An individual selected by the employee, or their representative, and the Labor Relations Division from a panel of five (5) candidates submitted by the State Mediation and Conciliation Services. The cost of the Arbitrator shall be borne equally by the employee, or their representative, and the County.

Chain of Command – This is the normal chain of supervision in a department for addressing/resolving operational concerns/problems. This normally would begin with the first-line supervisor through the Department Head/Administration.

Day/Business Day - A regular County workday (i.e. Monday-Friday). The time period for grievance purposes begins on the first day following the day the grievance is filed or submitted to the next step.

When the time period for a given step in the grievance procedure ends on either a weekend or a holiday, it shall be automatically extended to the next regular County workday.

Department Head - The administrative head or acting head of the department involved, or a designated representative.

Employee - An individual occupying a position permanently allocated by the Board of Supervisors as a part of the regular staffing of the department.

Grievance - A grievance is a complaint relating to any phase of an employee's employment or working conditions which the employee believes has been adversely affected because of:

A misapplication of a Memorandum of Understanding, Ordinance or Resolution of the Board of Supervisors, or of the written policies, administrative orders, or a clearly established lawful past practice of a department, relating to the employment of the individual; provided, however, that such complaint shall not include an action subject to the jurisdiction of the Civil Service Commission or any other matters which are otherwise reviewable pursuant to another administrative remedy.

NOTE: If a grievance is alleged relating to a past practice as specified above, the grievant must first establish that practice has existed, and if sustained, any decision relating to the grievance shall only apply to the specific grievance and shall not be considered as a precedent.

Group Grievance – A common grievance involving two (2) or more employees.

Immediate Supervisor - The individual who assigns, reviews, or directs the work of an employee, and who is not in a job classification in the same certified representation Unit as the grievant.

Parties – Reference to parties in this procedure include the employee or their representative (as indicated on the Grievance Form), department management, and Labor Relations staff, depending on the context of the particular reference.

Representative - The person identified by the employee on the Grievance Form to appear along with the employee in the presentation of a grievance.









