



EL PASO COUNTY DEPARTMENT OF HUMAN RESOURCES

Grievance Procedures

Revised Date: December 16, 2013

I. General

- A. Purpose: The purpose of the grievance procedures is to settle all grievances between the County and covered employees as quickly as possible and at as low of an administrative level as possible so as to assure efficient work operations and maintain employee morale.
- B. Grievance hearings are not judicial in nature; therefore, rules of courts of law or of evidence will not be followed. However, the elementary and fundamental principles of judicial inquiry shall be observed. This means the Commission retains the right to restrict the admission of evidence to just relevant and material evidence, and to limit evidence that is repetitive in nature.
- C. At all grievance hearings, whether in front of the Elected Official/Department Head or the El Paso County Civil Service Commission, all parties will be allowed to present facts or witnesses with the other party(ies) or their representative(s) being allowed to cross-examine.
- D. The employee may represent himself or have a designated representative throughout the grievance process. The employee must designate his/her representative in writing. During such period of representation, all communications and notices concerning the grievance between the Elected Official/Department Head, the El Paso County Civil Service Commission or the El Paso County Attorney's Office and the employee shall be through the employee's designated representative. In the event that the employee desires to end the representation, the employee shall so notify all affected parties in writing.

II. Eligibility

Any covered employee, as defined in employment definitions, may process a personal grievance, except those relating to his/her performance evaluation.

III. Scope of Grievance Appeal Procedures

- A. A personal grievance may be filed by a covered employee on one or more of the following grounds:
 - 1. Improper application of rules, regulations and procedures;
 - 2. Retaliation for the employee's exercise of any right they have under Federal or State law;
 - 3. Discrimination because of race, religion, color, creed, sex, age, national origin, disability or political affiliation;
 - 4. Disciplinary actions taken against him without proper cause; and/or
 - 5. Improper application of fringe benefits.

IV. Order of Appeals

- A. A grievance must be appealed through the chain of command in the following order:

1. Elected Official/Department Head (unless dismissal, suspension or demotion);
2. El Paso County Civil Service Commission;
3. District Court (if permitted under applicable State or Federal Law).

V. Time Limits for Filing and Response

- A. Grievances shall be promptly filed. To be considered, a grievance must be signed by the employee and filed in writing within fifteen (15) days from the occurrence made the basis of the grievance and/or from the date of receipt of written notification of disciplinary action, unless for "good cause" shown. Dismissal, suspension, or demotion grievances shall be filed with El Paso County Civil Service Commission. All other grievances shall be initially filed with the Elected Official/Department Head.
- B. A copy of the grievance should be retained by the employee and the original shall be filed with the El Paso County Civil Service Commission or Elected Official/Department Head. All grievances shall note the date the grievance was signed by the grievant and the date the grievance was received by the El Paso County Civil Service Commission or Elected Official/Department Head.
- C. The date of the action by the Elected Official/Department Head or the employee that forms the basis of the grievance must be noted on the grievance form.
- D. The Elected official/Department Head shall then investigate the grievance (other than grievances involving suspension, demotion and dismissal) and make a written determination within fifteen (15) days from receipt of the grievance and deliver a copy of the determination to the employee.
- E. If a hearing is conducted and the grievance is between two or more employees of the same department, or between an employee and supervisor, the Elected Official/Department Head will act as presiding official.
- F. The presiding official will establish a mutually agreeable date and time for the hearing no later than ten (10) days from the date of the filing of the grievance, to be conducted when all witnesses can be present and when it is not disruptive to work patterns of the organization, and will notify all individuals sufficiently in advance so that they may appear at the designated time.
- G. If the employee is not satisfied with the determination of the grievance by the Elected Official/Department Head, he shall have fifteen (15) days after receiving the Elected Official/Department Head's written determination to make a written appeal to the El Paso County Civil Service Commission. If the Elected Official/Department Head does not issue a written determination within fifteen (15) days as required by Section VI. D., the employee may then file an appeal with the El Paso County Civil Service Commission within fifteen (15) days of the Elected Official/Department Head's deadline.
- H. The grievant and the Elected Official/Department Head may agree in writing to extend the time limits set out in Sections VI.A., VI.D., VI.F., and VI.G.
- I. If the employee fails to meet the filing time limits, the grievance will be considered null and void, unless there is "good cause" shown. "Good cause" is defined in Section VIII.G.

VI. Grievance Resolution Procedures

- A. Hearings before the El Paso County Civil Service Commission are De Novo* and the grievant shall have the burden of proof by a preponderance of the evidence, except in cases involving dismissal, demotion or suspension. In cases involving dismissal, demotion, or suspension, the Elected Official/Department Head by whom the action was taken has the burden of proving by

a preponderance of the evidence just grounds for the dismissal, demotion or suspension. *De Novo means the Commission will conduct an evidentiary hearing and make a decision independent of any previous decisions or hearings.

- B. Hearings before the El Paso County Civil Service Commission will be set for the next available meeting date that is at least twenty-one (21) days after the grievance is filed. If more time is needed to hear the matter, the Commission may continue the hearing to another date, either a specially set hearing date or the next regularly scheduled meeting.

VII. Pre-Hearing Meeting and Other Procedures

- A. It shall be the policy of the El Paso County Civil Service Commission to encourage the timely pre-hearing resolution of grievances. As such, Alternative Resolution Meetings (ARMs) may be scheduled prior to an actual grievance hearing. The purpose of an ARM meeting is to determine if a mutually acceptable resolution to the grievance can be achieved prior to the hearing. A member of County Human Resources staff, as assigned by the Chief Human Resources Officer, shall be present at any ARM to facilitate communication. County Human Resources staff may also assist the grievant with the ARM process if the grievant is not represented. However, Human Resources staff may not advocate on behalf of the grievant. In accordance with Texas law, discussions at an ARM are confidential and may not be recorded or otherwise entered into evidence at a grievance hearing or any other matter (see Texas Rule of Evidence 408).

1. In keeping with this policy, all parties shall adhere to the following procedures:

- a. Grievances shall be filed by using a Grievance Initiation Form, approved by the Chief Human Resources Officer; the grievant should be notified on the Grievance Initiation Form of these ARM procedures and reminded of the link to the Civil Service Rules. Upon completion, this form shall then be forwarded to the County Attorney's Office for consideration of any alternative resolution options.
- b. The COUNTY ATTORNEY shall contact the grievant, or his or her attorney if represented, within 10 days after the filing of a grievance and set a date within 5 days of the contact to schedule an Alternative Resolution Meeting (ARM), if agreed by both parties.
- c. If an ARM is not agreed by both parties, the County Attorney's Office must notify the Human Resources Department no later than 24 hours of the decision being made, so that the grievance hearing can be set. Hearings before the El Paso County Civil Service Commission will be set for the next available meeting date that is at least twenty-one (21) days after the grievance is filed.
- d. If an ARM is agreed, and alternative resolution has been reached, the County Attorney's Office shall provide written notice that an agreement has been reached to the Human Resources Department prior to the next scheduled meeting of the Civil Service Commission. A notification item will be placed on the agenda of the next scheduled meeting indicating such resolution.

- B. All parties filing documents with the El Paso County Civil Service Commission shall serve a copy of the documents upon the opposing party at the same time.

- C. Except for good cause shown, at least seven (7) days prior to the date set for the hearing, all parties shall furnish each other and the El Paso County Civil Service Commission with the names of the witnesses to be called, a summary of their expected testimony, and a copy of each document, record, or exhibit to be introduced at the hearing. Each party is responsible for notifying the witness(es) and requesting the presence of its own witness(es). A party cannot rely on the other party's witness list as a guarantee that a witness will be present.

- D. The copy of each document, record, or exhibit provided by the department must be picked up by the grievant or designated party once he/she is notified that the documents are ready for pick up by the Human Resources Department. If a grievant has an e-mail address, the grievant has the option of having the documents e-mailed to them at the e-mail address they provide to the Human Resources Department. If the Human Resources Department is unable to e-mail the documents due to the electronic file size or if the grievant is unable to receive the documents via e-mail, the Human Resources Department shall notify the grievant and the grievant or their designated party must pick up the documents from the Human Resources Department.
- E. When either party request a continuance, that party shall file a written motion with the El Paso County Civil Service Commission, setting forth the grounds upon which such motion is made. Except for good cause shown, any such motion shall be made not less than seven (7) days prior to the scheduled date of the hearing. If both parties agree to the continuance in writing and it is the first continuance of the hearing, the continuance shall be automatically granted and the Chief Human Resources Officer is authorized to postpone the item until the next regularly scheduled Civil Service meeting; provided however, that such request must be made at least seven (7) days before the hearing. A request for a continuance, made fewer than seven (7) days before the hearing, may not be automatically granted, and the Director of Human Resources may not postpone the item without a hearing before the Commission. Both parties (and counsel) must be present for a hearing on any request for a continuance made fewer than (7) seven days before the hearing on the matter, even where the Parties agree to the continuance.
- F. A decision by the El Paso County Civil Service Commission becomes final upon the expiration of thirty (30) days from the date the decision is announced in open session by the El Paso County Civil Service Commission, unless the grievant, Elected Official/Department Head or the El Paso County Civil Service Commission motions to re-open the original decision within that thirty (30) day period. If a motion to re-open is filed in a timely basis, the El Paso County Civil Service Commission will have thirty (30) days to decide whether to re-open the original hearing. The El Paso County Civil Service Commission may only re-open the original hearing upon good cause shown. If the El Paso County Civil Service Commission does not make a decision within thirty (30) days to re-open, the decision becomes final on the 30th day after the motion to re-open was filed.
- G. "Good cause" may include newly discovered evidence which was not readily available at the time of the hearing despite reasonable efforts having been made to obtain the evidence, inability to have witness(es) appear despite reasonable efforts having been made to secure the attendance of the witness(es), unexpected illness or injury to any party or witness, or when the El Paso County Civil Service Commission's decision is contrary to law.
- H. If a motion to re-open is granted, the El Paso County Civil Service Commission shall schedule the matter for hearing for the next regularly scheduled Civil Service meeting and shall designate the issues to be considered at that hearing. Only evidence relevant and material to those issues so designated shall be admissible at that hearing. The decision by the El Paso County Civil Service Commission following this hearing becomes final upon announcement in open session.