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## CHAPTER 12

# GRIEVANCE PROCEDURES

### STATEMENT OF POLICY

It shall be the policy of the government of Guam to: promote favorable relations between management and its employees by resolving complaints expeditiously; preventing similar complaints; assuring fair and equitable treatment of all employees; and promoting harmonious working relationships among all levels of employees.

This chapter outlines the responsibilities and procedures to be followed by employees in the presentation of an informal or formal grievance. All levels of management shall carefully and promptly respond to an employee's grievance and shall be guided by these procedures.

#### 12.000 APPLICABILITY

The regulations in this Chapter shall apply to all permanent classified employees.

#### 12.100 DEFINITION

A grievance is any question or complaint filed by a permanent employee alleging that there has been a misinterpretation, misapplication or violation of a personnel statute, rule, regulation, or written policy which directly affects the employee in the performance of his official duties; or that he has received prejudicial, unfair, arbitrary, capricious treatment in his working conditions, or work relationships.

CSC Insert: The time frames provided in this chapter will serve as a guide and may be extended or shortened based on concurrence of the parties involved.

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## **12.200 COVERAGE**

Grievances may include but are not limited to, such matters as employee-supervisor relationships, duty assignments not related to job classification, shift and job locations assignments, hours worked, working facilities and conditions, policies for granting leave and other related matters.

## **12.300 EXCLUSIONS**

### **12.301 General Exclusions**

The following actions are not covered by these grievance procedures:

- A. Disqualification of an applicant
- B. Disqualification of an eligible
- C. Examination ratings
- D. Removal during original probationary period
- E. Appeals from classification determinations
- F. Appeals of adverse personnel actions
- G. Allegations or complaints of discrimination
- H. Appeals of performance evaluations

### **12.302 Grievance Procedures for Employee Organizations**

These procedures are also not applicable when the employee is in a unit covered by an exclusive recognition, as an employee organization, which has negotiated grievance procedures for that unit. When negotiated procedures exist, they shall be the exclusive procedures available to public employees in the unit for settlement of individual or group grievances.

### **12.303 Equal Employment Opportunity Discrimination Complaint**

When an aggrieved employee submits a written allegation of discrimination on grounds of race, color, religion, sex, national origin, marital status, age, disability, or political affiliation in connection with a matter which is subject to the government's grievance procedures, as well as the EEO discrimination complaint procedures, that allegation shall be processed under the EEO discrimination complaint procedures.

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## **12.400 GENERAL PROVISIONS FOR USE OF GRIEVANCE PROCEDURES**

### **12.401 Freedom from Reprisal or Interference**

- A. An employee and his representative shall be free to use the grievance system without restraint, interference, coercion, discrimination, or reprisal.
- B. An employee, whether acting in an official capacity for the agency, or on any other basis, must not interfere with, or attempt to interfere with, another employee's exercise of his rights under this grievance system. To be fully effective, the spirit as well as the letter of this noninterference requirement must be enforced. It is not enough for an official to abstain from overt threats or interference. He should refrain from making any statement or taking any action which has the appearance or even the flavor of a threat, interference or intimidation.

### **12.402 Employee's Status During Grievance Procedures**

An employee's status during each procedural level shall be status quo.

### **12.403 Right to Seek Advice**

All levels of management will provide an opportunity for an employee to communicate with and seek advice from:

- A. his servicing personnel office;
- B. the equal employment opportunity administrator or agency equal employment opportunity counselor; or
- C. a supervisory or management official of higher rank than the employee's immediate supervisor.

### **12.404 Representation**

- A. An employee has the right to present a grievance without representation.

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- B. An employee has the right to present a grievance with representation.
    - 1. An employee has the right to be accompanied, represented, and advised by a representative of his choice at any stage of the grievance proceedings.
    - 2. An employee may change his representative, but to do so, he must notify his supervisor and appointing authority of the change in writing.
    - 3. A person chosen by the employee must be willing to represent him.

**12.405 Official Time for Presentation of the Grievance**

- A. An employee must be given a reasonable amount of official time to present his grievance if he is otherwise in an active duty status.
- B. An employee's representative, if he is an employee of the government of Guam and is otherwise in an active duty status, must be given a reasonable amount of official time to present the grievance.
- C. There is no requirement that the official time for the presentation include time for investigation or preparation, or that it include travel expense or per diem travel allowance or consultation with private attorney.

**12.406 Termination of Grievance**

- A. An employee who has filed a grievance may terminate the grievance at any time.
- B. Failure on the part of the employee to proceed to a higher step of the grievance procedures within the time period specified, will terminate the grievance.

**12.407 Management's Responsibility for Timely Action and Settlement at the Lowest Possible Level**

- A. It shall be the responsibility of management to settle

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grievances fairly and promptly at, or near the organizational level where the grievance was brought to their attention by the employee.

- B. Failure by management to render a decision to the employee within the allotted time at any step constitutes denial, and the employee may then proceed to the next step of the grievance procedures.

## **12.500 STEP 1 - INFORMAL GRIEVANCE PROCEDURES**

### **12.501 Management Responsibility**

An employee's grievance may, or may not be objectively justified. What is important is that the grievance is real to the employee. When the grievance is well-founded, management has both a duty and a need to eliminate the cause. When the grievance is not well-founded, it is equally important to reach an understanding based on the full facts. Therefore, the informal procedure should assure consideration of every employee's grievance with a degree of promptness, sympathy, understanding, fairness, competence, and authority which convinces the employee that he has been treated fairly.

### **12.502 Settlement at the Lowest Possible Level of Management**

The informal procedures should be as simple as possible consonant with bona fide consideration of grievances. It should encourage settlement of matters at the lowest possible administrative level in the shortest possible time and should not, therefore, require any written explanation from the employee. However, the employee may present his grievance under the informal procedures, either orally or in writing, and he should not be prevented from submitting a written explanation if he desires.

### **12.503 Supervisor's Responsibility**

- A. Normal day-to-day discussions between employees and supervisors regarding working conditions and related employment matters are the most constructive and expeditious means of developing and enhancing favorable and effective work relationships.

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- B. Each employee of the government of Guam has the right to present matters to his supervisor, and each supervisor has the obligation to act promptly and fairly upon them, seeking the advice and assistance of others when necessary.

**12.504 Employee's Responsibility**

- A. Each employee is expected to make a concerted effort to achieve informal settlement of his grievance. He should bring his grievance to the attention of management promptly.
- B. Tolling Period - In counting the number of days for each step, if the last day of the period falls on a weekend, the filing time or receipt time falls on the next working day.

**12.505 Using the Informal Grievance Procedure - Step 1**

**A. Initiation by Employee**

In keeping with the personal nature of matters covered by grievance procedures, grievances can be initiated only by employees, singly or jointly; they may not be initiated by employee organizations. Employee organizations may be permitted to present a grievance on behalf of an employee, or a group of employees when requested to do so by the employee or employees.

**B. Time Limit**

1. An employee may present a grievance to his supervisor concerning a continuing practice or condition at any time. Grievances concerning a particular act or occurrence, must be presented within 15 calendar days of that action or occurrence.
2. The immediate supervisor shall render a decision within 10 calendar days of the presentation of the grievance.

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**C. Form of the Grievance**

An employee may present a grievance under the informal procedure either orally or in writing.

**D. Non-rejection Provision**

A grievance may not be rejected in the informal procedure for any reason. If the grievance is not timely or consists of a matter not covered under the grievance system, the employee should be so advised, but he must be allowed to submit his grievance under the formal procedures if he insists.

**E. Mandatory Use of the Informal Procedure**

An employee must complete the informal procedure before the agency may accept from him a grievance concerning the same matter under the formal procedure.

**12.600 STEP 2 - FORMAL GRIEVANCE PROCEDURES - NEXT ADMINISTRATIVE LEVEL**

**12.601 Presentation of the Grievance - Step 2**

- A. An employee or department head is entitled to present a grievance under the formal procedure if:
1. he has completed the informal procedures; and
  2. the grievance is not satisfactorily resolved at the informal level; or
  3. the immediate supervisor failed to render a decision within 10 calendar days of the presentation of the grievance at the informal level.
- B. The grievance presented in Step 2 must:
1. be in writing on a form prescribed by the Department of Administration;

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2. contain sufficient detail to identify and clarify the basis for the grievance;
  3. specify the personal relief request by the employee or the department head; and
  4. be submitted to the department/agency official who is the next higher supervisor than the immediate supervisor within five calendar days after the receipt of the answer in Step 1, or after the answer was due.

**12.602 Responsibility of Next Higher Supervisor**

- A. The next higher supervisor must determine whether the grievance is timely, is covered by the grievance procedures, and has been processed through the informal procedure.
- B. The next higher supervisor shall make a positive attempt to resolve the grievance. He shall render a decision, in writing, to the employee within five calendar days of receipt of the written grievance.

**12.700 STEP 3 - FORMAL GRIEVANCE PROCEDURES - DEPARTMENT HEAD**

**12.701 Presentation of the Grievance - Step 3**

An employee is entitled to present a grievance under Step 3, if:

- A. he has completed Step 2 of the procedures;
- B. the grievance is not satisfactorily resolved at the Step 2 level;
- C. he has specified the personal relief requested by the employee; and
- D. he has submitted to the Department/Agency head within five calendar days after receipt of the answer in Step 2, or after the answer was due.



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## **12.702 Department/Agency Grievance Committee**

### **A. Appointment of Committee**

Within three calendar days of receipt of the written grievance from the employee, the department/agency head shall appoint a Grievance Committee to investigate the circumstances of the grievance and to make a recommendation as to its disposition.

### **B. Committee Membership**

The Committee shall consist of four members who are permanent government employees, two members from the employee's peer group, and two members who are permanent employees at the managerial level.

### **C. Responsibility of Committee**

The Committee must determine whether the grievance is timely, is covered by the grievance procedures, and has been processed through the informal procedure.

### **D. Committee Inquiry**

Normally, the Committee shall be expected to convene and initiate a grievance inquiry appropriate to the nature and scope of the issues involved in the grievance. The inquiry will typically include the securing of documentary evidence and personal interviews in an effort to fully understand the issues and obtain the maximum information available pertinent to the issues.

### **E. Grievance File**

When the Committee begins a grievance inquiry, the Committee Chairperson (elected by the members of the Committee), shall establish an employee grievance file. This is an independent file, separate and distinct from the personnel folder. The grievance file is the official record of the grievance and must contain all documents pertaining to the grievance including:

1. statements of witnesses;

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2. records or copies of records; and
  3. reports of personal interviews.

**F. Open Record**

The grievance file is an open record. It is open for review by the employee and his representative, and must not contain any document that is not available to employees. Information to which the committee is exposed, which cannot be made available to the employee in the form it was received, must be included in the file in a form which the employee can review or it must not be used.

**G. Committee Report**

The Committee shall complete its investigation within 15 calendar days of the date the Committee was appointed, and shall submit a written report of its findings and recommendations to the department/agency head within two calendar days following the completion of its investigation.

**H. Department/Agency Head Written Decision**

The department/agency head shall render a written decision to the employee within five calendar days of receipt of the written report from the Committee.

**12.800 STEP 4 - FORMAL GRIEVANCE PROCEDURE - GRIEVANCE REVIEW BOARD**

**12.801 Presentation of the Grievance - Step 4**

- A. An employee is entitled to present a grievance under Step 4, if:
  1. he has completed Step 3 of these procedures;
  2. the grievance is not satisfactorily resolved at the Step 3 level; or

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3. the department/agency head failed to render a decision within 25 calendar days of the submission of the grievance, in writing, at the Step 3 level.

B. The grievance presented in Step 4, must:

1. be in writing on a form prescribed by the Director of Administration;
2. contain sufficient detail to identify and clarify the basis for the grievance;
3. specify the personal relief requested by the employee; and
4. be submitted to the Director of Administration within five calendar days after receipt of the answer in Step 3, or after the answer was due.

## **12.802 Grievance Review Board**

### **A. Appointment of Review Board**

Within 10 calendar days of receipt of the written grievance from the employee, the Director of Administration shall appoint a Grievance Review Board, which has the responsibility and authority to resolve the grievance.

### **B. Review Board Membership**

The Grievance Review Board shall consist of five members, of which two shall be the peers of the employee. The Chairperson of the Board shall be elected by the members and shall preside over meetings and hearings conducted during the course of its investigation.

### **C. Review Board Investigations**

The board shall conduct its meetings and hearings during working hours and personnel called to attend the hearings shall do so without loss of salary. Hearings shall be informal and technical rules of evidence shall not apply. Proceedings of the investigation shall be recorded in

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summary form and shall contain all pertinent facts brought out during the investigation.

**D. Review Board Decision and Report**

The Board shall conclude its investigation within 20 calendar days of the date the Board was appointed, and shall render its written decision to the employee and department/agency head on that twentieth day or sooner.

Management has a limited right to appeal a decision made by the Grievance Review Board where the decision is contrary to law.

**E. Grievance File**

The Board shall maintain an employee grievance file which shall contain all documents or information pertinent to the grievance.

**12.900 STEP 5 - APPEAL TO THE CIVIL SERVICE COMMISSION**

**12.901 Presentation of the Grievance - Step 5**

- A. An employee or department head is entitled to present a grievance appeal under Step 5, if:
1. he has completed Step 4 of these procedures;
  2. the grievance is not satisfactorily resolved at the Step 4 level;
  3. the Grievance Review Board failed to render a decision within 30 calendar days of the submission of the grievance at the Step 4 level;
  4. there has been a violation of the Government Code or Personnel Rules and Regulations;
  5. the procedural rights of the employee filing the complaint as outlined have been disregarded;

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6. the decision of the supervisor, appointing authority and the Agency Committee, or the Grievance Review Board has been unjust, inequitable or not in accord with the facts; and
  7. the appointing authority fails to act on the Grievance Review Board's decision.

**B. The grievance presented in Step 5, must:**

1. be in writing on a form prescribed by the Civil Service Commission;
2. contain sufficient details to identify and clarify the basis of the grievance;
3. include copies of the grievance forms submitted in Steps 2, 3, and 4;
4. specify the personal relief requested by the employee or the department head; and
5. be submitted to the Civil Service Commission within five calendar days after receipt of the answer in Step 4, or after the answer was due.

**12.902 Civil Service Commission**

**Commission Investigations**

- A. The Civil Service Commission shall review the official grievance file and all relevant written representations.
- B. The Commission may, in its discretion, afford the parties an opportunity to appear personally and present oral arguments and representations.

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DEPARTMENT OF ADMINISTRATION  
AGANA, GUAM  
NEXT ADMINISTRATIVE LEVEL GRIEVANCE FORM  
STEP 2

Employee Name: \_\_\_\_\_  
Name of Supervisor: \_\_\_\_\_  
Position Title: \_\_\_\_\_  
Name of Higher Supervisor: \_\_\_\_\_  
Work Location: \_\_\_\_\_

STATEMENT OF GRIEVANCE AND OUTCOME OF INFORMAL DISCUSSION WITH IMMEDIATE SUPERVISOR. (STEP 1):

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SPECIFIC POLICY OR REGULATION ALLEGED TO HAVE BEEN VIOLATED (CITE SOURCE):

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DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

REMEDY SOUGHT (BE SPECIFIC):

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DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, GRIEVANT SHALL PRESENT ORIGINAL AND COPIES #2, #3 AND #4 TO THE SUPERVISOR AT THE NEXT ADMINISTRATIVE LEVEL. COPY #5 SHOULD BE RETAINED BY GRIEVANT.

IMMEDIATE SUPERVISOR'S RESPONSE:

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DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, THE SUPERVISOR AT THE NEXT ADMINISTRATIVE LEVEL SHALL RETAIN ORIGINAL, PRESENT COPY #2 TO GRIEVANT, COPY #3 TO THE GRIEVANT'S IMMEDIATE SUPERVISOR, AND FORWARD COPY #4 TO DEPARTMENT/AGENCY HEAD.

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DEPARTMENT OF ADMINISTRATION  
AGANA, GUAM

**DEPARTMENT HEAD GRIEVANCE FORM -  
STEP 3**

APPEAL TO DEPARTMENT/AGENCY HEAD - ALL PORTIONS OF THIS SECTION MUST BE COMPLETED BY THE GRIEVANT (COPY #2) OF COMPLETED GRIEVANCE FORM - STEP 2 MUST BE ATTACHED:

**REASON FOR APPEAL**

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**REMEDY SOUGHT (BE SPECIFIC)**

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DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, GRIEVANT SHALL PRESENT ORIGINAL AND COPIES #2, #3, #4 AND #5 TO THE DEPARTMENT HEAD. COPY #6 SHOULD BE RETAINED BY GRIEVANT.

**DECISION OF DEPARTMENT/AGENCY HEAD**

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DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, DEPARTMENT/AGENCY HEAD SHALL RETAIN ORIGINAL AND FORWARD COPY #2 TO GRIEVANT, COPY #3 TO GRIEVANT'S IMMEDIATE SUPERVISOR, COPY #4 TO THE SUPERVISOR AT THE NEXT ADMINISTRATIVE LEVEL, AND COPY #5 TO THE DEPARTMENTAL GRIEVANCE COMMITTEE.

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DEPARTMENT OF ADMINISTRATION  
AGANA, GUAM

**GRIEVANCE REVIEW BOARD GRIEVANCE FORM -  
STEP 4**

REQUEST FOR COMMITTEE OF REVIEW. THIS SECTION MUST BE COMPLETED BY THE GRIEVANT. THE COPIES OF COMPLETED GRIEVANCE FORMS IN STEP 2 AND STEP 3 MUST BE ATTACHED.

I HEREBY REQUEST THAT THE GRIEVANCE REVIEW BOARD BE CONVENED TO CONSIDER THE GRIEVANCE OUTLINED ON THE ATTACHMENTS.

MY REPRESENTATIVE IS (OPTIONAL): \_\_\_\_\_

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, GRIEVANT SHALL PRESENT ORIGINAL, COPIES #2 AND #3 AND ALL ATTACHMENTS TO THE DIRECTOR OF ADMINISTRATION. COPY #4 SHOULD BE RETAINED BY GRIEVANT.

**REPORT OF GRIEVANCE REVIEW BOARD:**

SIGNED COPIES OF THE REPORT OF THE GRIEVANCE REVIEW BOARD SHALL BE ATTACHED TO GRIEVANCE FORMS. ORIGINAL SHALL BE PLACED IN THE GRIEVANCE FILE. COPY #2 TO THE GRIEVANT, AND COPY #3 SHALL BE FORWARDED TO THE DEPARTMENT/AGENCY HEAD.

DATE OF FORMATION OF GRIEVANCE REVIEW BOARD: \_\_\_\_\_

DATE OF SUBMISSION OF REPORT OF GRIEVANCE REVIEW BOARD: \_\_\_\_\_



