



# OLR RESEARCH REPORT

June 28, 2012

2012-R-0253

## **OLR BACKGROUNDER: NONUNION STATE EMPLOYEE GRIEVANCES**

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This report describes the grievance procedure available to nonunion state employees. OLR Report [2011-R-0337](#) describes the grievance procedure for unionized state employees.

### **SUMMARY**

[CGS § 5-202](#) establishes the grievance procedure for nonunionized state employees in permanent positions. It allows them to file grievances over (1) unsatisfactory performance evaluations; (2) demotions, suspensions, or dismissals; (3) alleged discrimination; (4) unsafe or unhealthy working conditions; and (5) violations involving the interpretation and application of a specific state personnel statute, regulation, or rule. In general, a grievance must work its way through a three-step preliminary review process that involves the employee's agency and the Office of Policy and Management (OPM), after which it can be appealed to the Employees' Review Board (ERB). The OPM secretary or the employee can further appeal the ERB's decision in court. Under certain circumstances, the law also allows employees to skip various steps in the process.

## **PRELIMINARY GRIEVANCE STEPS**

### ***First Level (Supervisor)***

Employees initiating a grievance must first file a written complaint with their supervisor, department chief, or another employee designated by the agency or department head. The grievance must be on a form developed by the OPM Secretary and ERB and must state the date of the alleged grievance and the relief sought. To preserve an appeal to the ERB, the grievance must be filed within 30 days of the alleged violation.

The supervisor, department chief, or designee can meet with the employee to review the grievance within seven days after its filing and must respond to the grievance within seven days after the meeting. If there is no meeting, the supervisor must respond to the grievance within seven days of its filing.

### ***Second Level (Agency Head)***

If the employee is unsatisfied with the first level response, he or she has seven days to present the grievance to his or her appointing authority (agency head) or a designated representative. The grievance must be in the same form and include the first level response. As at the first level, the agency head has seven days to meet with the employee or respond to the grievance. If a meeting is held, the agency head has seven days after the meeting to respond.

### ***Third Level (OPM)***

If the employee remains unsatisfied after receiving the second level response, he or she has seven days to present the grievance, in its same form, to the OPM secretary or his designated representative. The grievance must be in the same form and include the first and second level responses. The OPM secretary or his designee can meet with the employee to review the grievance within 30 days of receiving it and must respond to it within 15 days of the meeting. If the OPM secretary or designee does not meet with the employee, he or she must respond within 30 days of receiving the grievance.

## **APPEALS TO THE EMPLOYEES REVIEW BOARD**

### ***The ERB***

The ERB is a seven member board appointed by the governor. By law, each member must have substantial current experience as an impartial arbitrator of labor-management disputes and at least one member must be an attorney with experience in administrative or labor law. The members serve four year terms and cannot serve more than two consecutive terms. They cannot be state employees.

### ***Appeals***

In general, employees can appeal to the ERB after completing the three preliminary grievance levels and must submit their appeals within 30 days from the completion of the final level. The board then assigns a time and place for a hearing and notifies the parties. The hearings are held before a panel of at least three ERB members and are not bound by the technical rules of evidence that apply in courts. Among other things, the panel can administer oaths, issue subpoenas, and investigate cases. The hearings must be open to the public, although they can be closed at the request of an aggrieved employee.

The panel can only decide in favor of an employee if a majority of its members find that the action being appealed was arbitrary or taken without reasonable cause. It can direct appropriate remedial action after considering what is just and equitable relief for the employee and the best interests and effectiveness of the state service. It must render a decision within 60 days from the conclusion of a hearing.

The OPM secretary and any employees aggrieved by an ERB decision can appeal to the Superior Court. The board can intervene as a party in any appeal of its decision. If the OPM secretary appeals a decision by the board and subsequently loses the appeal in court, the effected employees are entitled to recover their court costs and reasonable attorneys' fees.

### **EXCEPTIONS**

The law provides three exceptions which allow employees to skip certain steps in the above process:

1. grievances involving a dismissal, demotion, or suspension can be filed directly with OPM within 30 days of the action's effective date;

2. a group of employees grieving the same issue can file directly with the ERB within 30 days of the alleged offending action or its effective date; and
3. employees alleging that a personnel action was taken in retaliation for filing a grievance can appeal directly to the ERB within 30 days of learning of the specific incident behind their allegations.

In addition, employees who have been laid off or dismissed due to an economic downturn, lack of work, insufficient appropriations, changes in departmental organization, or the abolition of their position can only appeal to the ERB if they allege that their layoffs violated statutory seniority and notice requirements (CGS § [5-241](#)). To pursue these appeals, the employees must also (1) initiate the third level of preliminary grievance review within 30 days of the effective date of their layoff or (2) submit their appeal to the board within 30 days of the effective date of their layoff.

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