

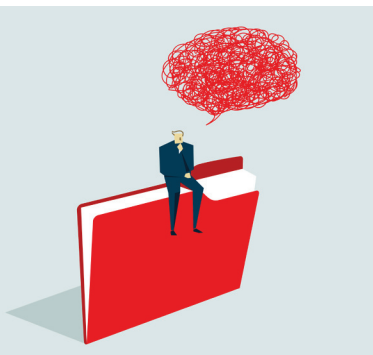
How to Prepare an Effective Grievance

As a state manager, supervisor or confidential employee, you are excluded from the rank-and-file collective bargaining process.

But ... you have rights. Legal rights.

You have a right to file various appeals with the State Personnel Board and the California Department of Human Resources (CalHR). You also have the right to file a grievance within your department. As a member of the Association of California State Supervisors, **you have the right to receive professional representation.**

ACSS members are entitled to advice and counsel appropriate to the processing of a grievance or appeal by an ACSS labor specialist. The conduct and extent of such representation is governed by ACSS Operating Policy & Procedure file.



You and your ACSS labor specialist are entitled to a reasonable amount of state work time to prepare and present your grievance. If you have questions about a complaint or grievance, call ACSS at (800) 624-

2137 and arrange to confer with your ACSS labor specialist.

Time Consideration

It is critical that you adhere to the strict deadlines when preparing and filing your grievance. If your problem is the result of a one-time, non-recurring employer action (example: you were docked for an absence and denied sick leave), then you have just 10 working days to file a written grievance of this

particular employer action. After 10 days, your opportunity is lost.

In such a situation, you and your ACSS representative must make haste, using the phone and fax to collaborate in the filing of a grievance in the short time available.

If your problem deals with a recurring management action, however, you probably have ample time to research and write a grievance to be filed after management next repeats that particular action. Following each management action is a 10-day opportunity to grieve that action.

The grievance procedure permits you to grieve an issue via channels to the head of your department and thereafter, if you choose, to the director of CalHR. You should review the procedure and timeline before you proceed with the preparation of your grievance.

Most important, call ACSS and don't go through it alone!

Grievance Terms

Informal Discussion

The excluded employee or the employee's representative shall discuss the grievance with the excluded employee's immediate supervisor. If the grievance is not settled within five (5) work days, a written grievance may be filed.

Formal Grievance – Level 1

A formal grievance may be filed not later than ten (10) work days after the event or circumstances occasioning the grievance. The first level of review shall respond to the grievance in writing within ten (10) work days after the receipt of the formal grievance.

Formal Grievance – Level 2

The grievant may appeal the decision of the first level within ten (10) work days after receipt of the response or date response was due. Within fifteen (15) work days after receipt of the appealed grievance, the person designated by the appointing power as the second level of

review shall respond in writing to the grievance.

Formal Grievance – Level 3

The grievant may appeal the decision of the second level within ten (10) work days after receipt of the response or date response was due to the appointing power or his/her designee. Within fifteen (15) work days after the receipt of the appeal, the appointing power or his or her designee shall respond in writing to the grievance.

Formal Grievance – Level 4

The grievant may appeal the decision of the third level within ten (10) work days after the receipt of the response or date response was due to the Director, CalHR or his/her designee. Within twenty (20) work days the Director, or his/her designee shall respond in writing to the grievance.

Forms

The director shall prescribe a standard excluded grievance form and any additional forms to be used in processing grievances.

Representation

The excluded employee and his/her representative, recognized by the Director in accordance with the provisions of Section 599.857, may be authorized a reasonable amount of work time, as determined by the appointing power and approved by the Director, to prepare and present a grievance.

Non-Merit Statutory Appeals

Disputes regarding appeals of layoff, appeals of transfer, petitions to set aside resignation, appeals for reinstatement after automatic resignation shall be filed in writing directly with the director. Such appeals shall be filed in accordance with specific time limits proscribed by applicable statute.

Such appeal may be assigned to a hearing officer for hearing or investigation. The hearing officer is the authorized representative of the director and is fully authorized and empowered to grant or refuse extensions of time, to set

such proceeding for hearing, to conduct a hearing or investigation in every such proceeding, and to perform any and all other acts in connection with such proceeding that may be authorized by law or by this article.

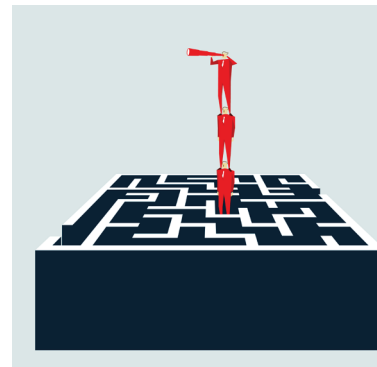
Rehearing

Within thirty (30) days after service of a copy of the decision any party may file a written petition for rehearing with the Director. Within thirty (30) days after such filing, the Director shall serve a copy of the petition upon the other parties to the proceeding.

Within sixty (60) days after service of the petition for rehearing, the Director shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within the ninety (90) day period is a denial of the petition. If a rehearing is granted, the Director may rehear the case itself on all pertinent parts of the record of the prior hearing and such additional evidence and argument as may be permitted by the Director.

Decision Becomes Final When

Unless a proper application for rehearing is made, every decision shall become final thirty (30) days after service by the Director of a copy of such decision upon the parties to the proceeding in which the decision is rendered.



Your ACSS Labor Relations Representative can help you navigate through the maze of the grievance process.

For more information, read Title 2, California Code of Regulations, Section 599.859 - Grievance and Appeal Procedure - Excluded Employees at www.calhr.ca.gov.

Examples of Excluded Employee Grievances

On-Call/Standby Compensation

Pay Differentials

Health & Safety (including Workplace Violence/ Workplace Security)

Leave Denial(s) (including administrative time off/ATO)

Denial of Sick Leave

Government Code sections 19859 through 19868.3 and Title, 2, California Code of Regulations, sections 599.745 (rank-and-file) through 599.751. (Section 599.745.1 pertains to excluded employees.)

Sick leave means the necessary absence from duty of an employee. The appointing power shall approve sick leave only after having ascertained that the absence was for an authorized reason and may require the employee to submit substantiating evidence including, but not limited to, a physician's certificate. If the appointing power does not consider the evidence adequate, the request for sick leave shall be disapproved.

An employee may file an appeal for the failure or refusal of the appointing power to approve a request for sick leave.

Denial of Representation

Gov. Code § 3530: Excluded employee organizations shall have the right to represent their excluded members in their employment relations, including grievances, with the State of California.

CCR § 599.859 (f) Representation: The excluded employee and his/her representative, recognized by the Director in accordance with the provisions of Section 599.857, may be authorized a reasonable amount of work time, as determined by the appointing power and approved by the Director, to prepare and present a grievance.

Performance Appraisal

Government Code sections 19992 through 19992.4 and Title 2, California Code of Regulations, section 599.798 (rank-and-file); Government Code sections 19992.8 through 19992.13 and Title 2, California Code of Regulations, section 599.859 (excluded employees). An excluded employee may file a grievance of his or her performance appraisal report to the appointing power. The grievant may appeal the decision of the third level within ten (10) working days after receipt of the response to the Director, The California Department of Human Resources. Filing of a grievance is based on that the performance appraisal report was used to abuse, harass, or discriminate against the employee.

Denial of Merit Salary Adjustment (MSA)

Government Code sections 19832; 19836 and Title 2, California Code of Regulations, sections 599.684 (rank-and-file); 599.859 (excluded).

An employee whose merit salary adjustment will not be recommended by the supervisor shall be informed of the reasons for such action. Within 10 days after the employee is informed the merit salary adjustment will not be recommended, the employee may file a written request with the appointing power for reconsideration under the appointing power's grievance procedure. The employee may appeal to the California Department of Human Resources' (CalHR) Statutory Appeals Unit (SAU) within 15 days after having exhausted the departmental remedy as herein specified.

Release Time

CCR § 599.859 (f) Representation: The excluded employee and his/her representative, recognized by the Director in accordance with the provisions of Section 599.857, may be authorized a reasonable amount of work time, as determined by the appointing power and approved by the Director, to prepare and present a grievance.

Government Code Section 19680, which states in relevant part, it is unlawful for any person to (a) willfully by himself or herself, or in cooperation with another person, to defeat, deceive, or obstruct any person with respect to his or her right of examination, application, or employment.

Government Code Section 19681: It is unlawful for any person to (c) use any unfair means to cause or attempt to cause any eligible person to waive any rights obtained under this part.

Government Code Section 19682: Every person who violates any provision of this chapter is guilty of a misdemeanor. In accordance with Section 19683, action may be taken by the appointing power, the department, or the executive officer of the board may file charges against a state employee who violates any provisions of this chapter.

Out Of Class

Excluded employee must first file a departmental grievance for an out-of-class claim, and request a desk audit.

Excluded employees filing grievances for alleged out-of-class work should also fill out a Job Description Form – CalHR 651 and submit it to their personnel office along with the excluded employee grievance form.

Appeal of denial of out-of-class claim: Government Code sections 19815.4C and 19818.16 provide for CalHR to review and consider a denial of an out-of-class grievance from an excluded employee as long as the employee files a timely appeal. The time for filing an appeal is within 30 calendar days after service of the preliminary determination.

To file a grievance, download
Grievance Form STD - 631 at
www.ACSS.org/Representation/Grievances.

**IF YOU HAVE
A CAREER ISSUE,
CALL US FIRST!
(800) 624-2137**

ASSOCIATION OF CALIFORNIA STATE SUPERVISORS

1108 O Street, Suite 400

Sacramento, CA 95814

www.ACSS.org | acss@ACSS.org

KNOW
your
RIGHTS

HOW TO FILE A GRIEVANCE

Supplemental information about the grievance process for Excluded State Employees.

2017

