

The Citadel
Policies & Procedures Manual – Human Resources Department

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Grievance and Appeals

I. Policy

SCOPE AND PURPOSE:

- A. The General Assembly finds that harmonious relations between public employers and public employees are a necessary and most important factor in the effective and efficient operation of government, and that a proper forum for the understanding and resolution of employee grievances will contribute to the establishment and maintenance of harmony, good faith, and the quality of public service. The General Assembly also recognizes that the most effective and cost efficient means of resolving grievances occurs at the lowest level, and state agencies are encouraged to use methods of alternative dispute resolution to avoid a grievance hearing and further litigation. It is for the protection and in the interests of both the employee and the agency via a neutral method of dispute resolution and fair administrative review, that the "State Employee Grievance Procedure Act" (the Act), was enacted.
- B. Any covered employee of The Citadel is eligible to file a grievance or appeal under this employee grievance procedure.
- C. The following employment actions do not constitute a basis for a grievance or an appeal:
 - 1. A covered employee who is promoted and subsequently demoted prior to serving six (6) months of satisfactory service in the higher class with a higher state salary range shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a lower class with a lower state salary range than the class in which the employee was serving prior to promotion;
 - 2. A covered employee who is promoted and subsequently receives a reduction in pay prior to completing six (6) months of satisfactory service in the higher class with a higher state salary range shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to promotion;
 - 3. A covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such

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actions and the covered employee can rescind such voluntary actions only if the agency head or the agency head's designee agrees;

4. A covered employee whose position is reclassified to a class with a lower state salary range shall not have the right to file a grievance or an appeal concerning the reclassification to the State Human Resources Director unless a determination is made that a material issue of fact exists concerning a punitive reclassification; and
 5. A covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities taken away prior to completing six (6) months of service, shall not have the right to file a grievance or an appeal concerning a salary reduction equivalent to the amount of additional job duties or responsibilities increase.
- D. Throughout this grievance procedure the words "grievance" and "complaint" are used interchangeably and carry the same meaning. Grievances may be based on the following: terminations, suspensions, involuntary reassignments, and demotions. A grievance may also be based on a reclassification but only if the employee alleges that the reclassification was of a punitive nature, and the Director of Human Resources determines that there is a material issue of fact. A grievance may also be based on an employee stating that he/she was denied the opportunity for consideration for a promotion for which he/she was qualified when the promotional opportunity occurred and the employee applied or would have applied if he/she had known of the promotional opportunity. If such a statement is made, the grievance will be processed under this grievance procedure if the Director of Human Resources, or in the case of an appeal the State Human Resources Director, determines that there is a material issue of fact. However, when the College promotes an employee one organizational level above the promoted employee's former level, that action is not grievable under this grievance procedure for any other employee under any circumstances. Also, failure to be selected for a promotion is not grievable under this grievance procedure. Salary decreases based on performance as indicated on EPMS evaluations are adverse employment actions that may be considered a grievance or an appeal. A reduction in force is an adverse employment action considered as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the Citadel inconsistently or improperly applied its reduction in force policy or plan.

Notwithstanding any of the above, the following actions are not grievable under this procedure:

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1. Reclassifications, reassignments and transfers within the same state salary range;
2. Any personnel action resulting from a reduction in force unless the grievant states there has been inconsistent or improper application of the College's reduction in force policy or plan and the Director of Human Resources, or in the case of an appeal the State Human Resources Director, determines that there is a material issue of fact that the Citadel inconsistently or improperly applied its reduction in force plan.

E. Definitions:

As used in this Grievance Procedure, unless the context clearly indicates otherwise, the following words or phrases shall mean:

"Calendar days" means the sequential days of a year. The time shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday, or an official legal holiday, it must be excluded.

"Class" means a group of positions sufficiently similar in the duties performed, degree of supervision exercised or received, minimum requirements of education, experience or skill, and the other characteristics that the same state class title and the same state salary range are applied to each position in the group by the State Office of Human Resources.

"Covered employee" means a full-time or part-time employee occupying a part or all of an established full-time equivalent (FTE) position who has completed the probationary period and has a "meets" or higher overall rating on the employee's performance evaluation and who has grievance rights. Instructional personnel are covered upon the completion of one academic year except for faculty at state technical colleges of not more than two full academic years' duration. If an employee does not receive an evaluation before the official review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, or time-limited employees who do not have grievance rights.

"Demotion" means the assignment of an employee by the appointing authority from one established position to a different established position having a lower state salary range.

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"Full-Time Equivalent (FTE)" means a value expressing a percentage of time in hours and of funds related to a particular position authorized by appropriations acts enacted by the General Assembly.

"Grievance" means a complaint filed by a covered employee or the employee's representative regarding an adverse employment action designated in Section 8-17-330 of the SC Code of Laws taken by the College.

"Probationary employee" means a full-time or part-time employee occupying a part or all of an established FTE position in the initial working test period of employment with the State of twelve months' duration for non-instructional personnel, of the academic year duration for instructional personnel except for those at state technical colleges, or of not more than two full academic years' duration for faculty at state technical colleges. An employee who receives an unsatisfactory performance appraisal during the probationary period must be terminated before becoming a covered employee.

"Promotion" means an employee's change from a position in one class to a position in another class having a higher state salary range.

"Punitive Reclassification" means the assignment of a position in one class to a different lower class with the sole purpose to penalize the covered employee.

"Reassignment" means the movement within an agency or an employee from one position to another position having the same state salary range, or the movement of a position within the College which does not require reclassification.

"Reclassification" means the assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position.

"Reduction in force" means a determination by the College to eliminate one or more filled positions in one or more organizational units within the College due to budgetary limitations, shortage of work, or organizational changes.

"Salary decrease based on performance" means the reduction of a covered employee's compensation based on the results of an Employee Performance Management System (EPMS) evaluation.

"State Human Resources Director" means the head of the Office of Human Resources of the State Budget and Control Board, or his designee.

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"Suspension" means an enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.

"Temporary employee" means a full-time or part-time employee who does not occupy an FTE position, whose employment is not to exceed one year, and is not a covered employee.

"Termination" means an action taken against an employee to separate the employee involuntarily from employment.

"Transfer" means the movement to a different agency of an employee from one position to another position having the same salary range, or the movement of a position from one agency to another agency, which does not require reclassification.

F. Protection of Employees:

No employee shall be disciplined or otherwise prejudiced in employment for exercising rights, testifying, or providing information in accordance with the grievance and appeals procedure.

G. Informal Complaints:

Prior to filing a formal grievance, the covered employee may first attempt to resolve the matter informally with his immediate supervisor. This matter may be presented verbally or in writing. However, this is merely an informal attempt to resolve the matter and cannot be substituted for the requirements of Step One in the following procedure.

H. Formal Complaints:

If the informal procedure does not produce a result satisfactory to the complainant, or if the complainant does not desire to follow the informal procedure, a formal complaint may be filed. The Act provides that a covered employee has the right during the grievance and appeal process to a representative, which may include legal counsel. If the covered employee chooses to exercise the right of legal counsel, it shall be at his expense.

I. Time Limit to Initiate a Grievance:

If the matter was not resolved informally with the covered employee's immediate supervisor, the covered employee must notify the agency's Human Resources Office in writing to initiate a formal grievance. The covered employee must initiate the

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grievance with the Citadel's Human Resources Office within fourteen (14) calendar days of the effective date of the grievable action.

Time Limits - The covered employee filing the grievance must comply with the time limits established in each step of the grievance procedure. Failure by the covered employee to comply with the prescribed time limit in each step constitutes a failure to exhaust administrative remedies and waives the covered employee's right to further continue the grievance. Internal time limits may be altered only by mutual written agreement of both parties. The College is responsible for rendering a final decision on the grievance within forty-five (45) calendar days from the date a formal grievance is filed. This forty-five (45) calendar days period for action by the College may not be waived except by mutual written agreement of both parties. Failure by the College to issue a final decision within this forty-five (45) calendar day period is considered an adverse decision. This failure to issue a final decision allows the covered employee to proceed with an appeal to the State Human Resources Director after 45 calendar days, but no later than 55 calendar days from the initial date the grievance was filed with the agency. Failure by the covered employee to file an appeal within the time periods referenced in this paragraph shall constitute a waiver of the right to appeal.

J. Mediation:

"Mediation" means an alternative dispute resolution process whereby a mediator who is an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and non adversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.

Procedure:

Step One:

1. A formal grievance must be filed in writing to the Director of Human Resources using the Employee Grievance Procedure Form (<http://www.citadel.edu/hr/forms>) within fourteen (14) calendar days of the effective date of the grievable action.

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2. The Director of Human Resources is the Citadel's designated official. The Director of Human Resources shall notify the grievant in writing of the date the grievance was considered filed with his/her office. He/she shall review the grievance to determine whether the complaint is grievable as defined under the Act and may conduct appropriate investigations and fact findings as he/she may consider necessary to make this determination. If it is determined that the matter is not grievable, the covered employee shall be so advised in writing by the Director of Human Resources, normally within five (5) calendar days of receipt of the grievance. Such determination shall be a final decision within the agency which may be appealed to the State Human Resources Director. However, any initial determination by the Director of Human Resources or other designated official that the matter may be grieved shall only entitle the covered employee to have the matter considered in accordance with this grievance procedure and shall in no way be construed to be an adjudication of the merits of the grievance.

If it is determined that the matter is grievable, the Director of Human Resources or other designated official will contact the employee and the Citadel representative(s) to determine if they wish to take part in voluntary mediation. If the employee or The Citadel submits a written decision not to participate in mediation, or fails to respond within three (3) calendar days concerning voluntary mediation, the Director of Human Resources will promptly schedule a conference between the employee's next level supervisor and the employee, normally within five (5) calendar days.

With Mediation:

When the employee and The Citadel representative(s) both agree in writing to participate in voluntary mediation, the Director of Human Resources will make the necessary arrangements for the selection of a mediator

- a. The mediator will serve as an impartial third party who will encourage and facilitate a resolution to the complaint without advising what the result should be. The mediation conference(s) will be confidential and limited to the parties and their representatives. Other persons may attend with the permission of the mediator and the other party. The mediator may not be compelled, by subpoena or otherwise, to divulge any records or discussions or to testify in regard to the mediation conference in any adversary proceeding or judicial forum. If the parties agree to settle the complaint, the mediator will assist in drafting a mediation agreement which both parties must sign. The mediator may share terms of the settlement agreement with The Citadel's designated officials who need to finalize and assist in implementing the agreement.
- b. If the complaint is not settled within eight (8) calendar days of the initial mediation conference, the mediator will inform the Director of Human

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Resources that a settlement has not occurred. The Director of Human Resources will schedule a conference between the employee's next level supervisor and the employee within five (5) calendar days. The employee will have an opportunity to present his/her position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the employee. The employee will be advised on his next level supervisor's decision, in writing, within five (5) calendar days of the conference.

Without Mediation:

If the complaint is grievable and the employee or The Citadel submits a written decision not to participate in mediation, or fails to respond within three (3) calendar days concerning voluntary mediation, the Director of Human Resources will promptly schedule a conference between the employee's next level supervisor and the employee, normally within five (5) calendar days. The employee will have an opportunity to present his position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the employee. The employee will be advised of his next level supervisor's decision, in writing, normally within five (5) calendar days of the conference.

Step Two:

To continue the grievance, the employee must notify the President, or other designated official, in writing, within five (5) calendar days after receiving the Step One decision. The President, or other designated official, must promptly schedule and conduct a conference with the employee, normally within five (5) calendar days. The employee will be provided an opportunity at this time to present his/her position regarding the grievance. The President, or other designated official, may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the employee. The President, or other designated official, must advise the employee of the decision, in writing, within five (5) calendar days of the conference. This will be The Citadel's final decision.

Appeal to the State Human Resources Director:

A. The Act provides for an appeal of a grievance beyond the agency to the State Human Resources Director. Any covered employee may appeal the decision of the President or designee. It also provides that the employee has the right during the grievance and appeal

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process to a representative, including legal counsel. If the employee chooses to exercise the right of legal counsel, it shall be at his/her expense.

- B. Such appeal must be in writing and submitted to the State Human Resources Director within ten (10) calendar days of receipt of The Citadel's final decision, or 55 calendar days from the initial date the grievance was filed with The Citadel, whichever occurs later. As to the 55 calendar days, the Act provides that a covered employee may appeal directly to the State Human Resources Director in the event The Citadel does not complete its entire internal grievance procedure within 45 calendar days from the time the grievance is initially filed within the agency. The failure to issue a final decision within this 45 calendar day period allows the employee to proceed with an appeal to the State Human Resources Director, but no later than 55 calendar days from the initial date the grievance was filed within the agency. Failure by the covered employee to file an appeal within the time frames described in this paragraph shall constitute a waiver of the right to appeal.