

Subject: GRIEVANCE PROCEDURE (also see Merit Appeal)

REFERENCES	SECTIONS
Classification and Pay (C & P) Guide <a href="http://www.dgs.ca.gov/ohr/AboutUs.aspx">http://www.dgs.ca.gov/ohr/AboutUs.aspx</a>	375.8-375.11.2.2
Law & Regulation <a href="http://leginfo.legislature.ca.gov/faces/codes.xhtml;jsessionid=ec740fb92d7f258ccc38ebd5c0c9">http://leginfo.legislature.ca.gov/faces/codes.xhtml;jsessionid=ec740fb92d7f258ccc38ebd5c0c9</a> SPB Rule <a href="http://weblinks.westlaw.com/toc/default.aspx?Abbr=ca%2Dadc&amp;Action=ExpandTree&amp;AP=I1CF57861D48D11DEBC02831C6D6C108E&amp;ItemKey=I1CF57861D48D11DEBC02831C6D6C108E&amp;RP=%2Ftoc%2Fdefault%2Ewl&amp;Service=TOC&amp;RS=WEBL13.01&amp;VR=2.0&amp;SPa=CR-1000&amp;pb=DA010192&amp;fragment#I1CF57861D48D11DEBC02831C6D6C108E">http://weblinks.westlaw.com/toc/default.aspx?Abbr=ca%2Dadc&amp;Action=ExpandTree&amp;AP=I1CF57861D48D11DEBC02831C6D6C108E&amp;ItemKey=I1CF57861D48D11DEBC02831C6D6C108E&amp;RP=%2Ftoc%2Fdefault%2Ewl&amp;Service=TOC&amp;RS=WEBL13.01&amp;VR=2.0&amp;SPa=CR-1000&amp;pb=DA010192&amp;fragment#I1CF57861D48D11DEBC02831C6D6C108E</a>	GC 18952, 18714(a)(b), 19816.5, 19798, 19994.2-19994.4, 19996-19998.1 Title 2, Div. 1, Chapter 3, Subchapter 1, Article 21, CCR 599.840-599.850, 599.855-599.872, 2 CCR 470-472 Article 25, 599.893-599-910
Memorandum of Understanding (MOU) <a href="http://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx">http://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx</a>	Section varies with MOU.
Personnel Management Policy and Procedures Manual (PMPPM)	441, 442
Responsible Control Agency and Program CalHR <a href="http://www.calhr.ca.gov/Pages/home.aspx">http://www.calhr.ca.gov/Pages/home.aspx</a> Public Employment Relations Board (PERB) <a href="http://www.perb.ca.gov/">http://www.perb.ca.gov/</a>	
SPB/CalHR Policy Memos <a href="http://www.calhr.ca.gov/state-hr-professionals/Pages/policy-memos.aspx">http://www.calhr.ca.gov/state-hr-professionals/Pages/policy-memos.aspx</a>	PML 98-020, 2001-00, 2002-016, 2002-019
<b>Other:</b>	
DGS Labor Relations Website and/or frequently asked questions <a href="http://www.dgs.ca.gov/ohr/Programs/LaborRelations.aspx">http://www.dgs.ca.gov/ohr/Programs/LaborRelations.aspx</a>	

## Grievance Procedure (also see Merit Appeals)

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### Policy

Pursuant to the laws and rules of the State, an employee shall use an Employee Contract Grievance (Std. 630) form or an Excluded Employee Grievance (Std. 631) form. Either form shall be filled out in its entirety and clearly and concisely explain the nature of the grievance. The grievance must list the specific articles(s) and section(s) of the contract allegedly violated, and the remedy sought.

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### Purpose

The Office of Labor Relations (LR) is responsible for advising management representatives on grievance administration and processing, and as such, questions about grievances are referred to the LR staff.

The purpose of grievance and appeal procedures is to provide for the prompt review and resolution of grievable issues either formally or informally at the lowest possible level. Major bargaining issues include but are not limited to:

- Wages
  - Hours
  - Layoff process
  - Discipline
  - Probation
  - Overtime calculations
  - Health benefits
  - Retirement
  - Holidays
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## Grievance Procedure (also see Merit Appeals), Continued

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**Definitions** A grievance<sup>1</sup> is defined differently, depending upon whether it is presented by an excluded employee or a rank-and-file employee. The following definitions apply to regulations set forth in Article 21 of the California Code of Regulations, Employer-Employee Relations for Excluded employees.

- **Rank-and-file grievance** means a dispute of one or more employees, or a dispute between the State and the Union, involving the interpretation, application, or enforcement of the express terms of a Memorandum of Understanding (MOU).
- **Excluded employee grievance** means a dispute of one or more excluded employees involving the application or interpretation of a statute, regulation, policy or practice which falls under the jurisdiction of the Director, Department of Personnel Administration (DPA).
- **Excluded employee** means an employee of the State excluded from or otherwise without exclusive representation under the Ralph C. Dills Act.
- **Excluded employee organization** means an organization that represents members who are “excluded employees” under section 3526 through 3539 of the Government Code.
- **Supervisory organization** means an organization which represents members who are managerial, supervisory or “confidential” employees under sections 3513(g), 3527(e), 3529 through 3535 and 3538 of the Government Code.
- **Non-merit statutory appeal** means an appeal of
  - an involuntary transfer to a position in the same classification or an appropriate classification in a location that reasonably requires an employee to change his/her place of residence in accordance with sections 19994.2-19994.4 of the Government Code
  - a petition to set aside resignation in accordance with section 19996.1
  - an appeal for reinstatement after automatic resignation (AWOL) in accordance with section 19996.2
  - an appeal of layoff in accordance with section 19997.14.

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<sup>1</sup> In contrast, a **complaint** is a dispute of the application or interpretation of a rule or policy NOT covered by the MOU.

## Grievance Procedure (also see Merit Appeal), Continued

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**Rank and file procedures** Refer to the appropriate bargaining unit contract for specific information regarding employee grievance procedures and time frame requirements. The Employee Contract Grievance-STD 630 is used to file an applicable grievance. You can locate Memorandum of Understanding (MOU) information at <http://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx>. The Std. 630 can be accessed at <http://www.calhr.ca.gov/pages/forms.aspx>. In brief, the following steps are followed to resolve a grievance:

1. Employee informally meets with supervisor to discuss disputed matter.
2. If unresolved, employee files a formal grievance in accordance with employee's MOU.
3. Level 1. Supervisor reviews formal grievance and makes a decision.
4. Level 2. If unresolved, Manager reviews formal grievance and makes a decision.
5. Level 3. If unresolved, applicable Deputy Director, with the assistance of the Office of Labor Relations, reviews grievance and makes a decision. The Office of Labor Relations frequently writes the decision.
6. Level 4. If unresolved, the Department of Personnel Administration (DPA) evaluates the matter and writes a decision.

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## Grievance Procedure (also see Merit Appeals), Continued

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### **Excluded employee procedures**

The Excluded Employee Grievance-STD 631 is used to file an applicable grievance. You can locate Memorandum of Understanding (MOU) information at <http://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx>. The Std. 631 can be accessed at <http://www.calhr.ca.gov/Pages/forms.aspx>. In brief, the following steps are followed to resolve a grievance:

1. The excluded employee or the excluded employee's representative shall discuss the grievance with the excluded employee's immediate supervisor. If the grievance is not settled within five work days, a written grievance may be filed.
2. Level 1. A formal grievance may be filed no later than ten work days after the event or circumstances triggering the grievance. The first level of review (supervisor) shall respond to the grievance in writing within ten work days after the receipt of the formal grievance.
3. Level 2. The grievant may appeal the decision of the first level within ten work days after receipt of the response. Within fifteen work days after receipt of the appealed grievance, the office chief shall respond in writing to the grievance.
4. Level 3. The grievant may appeal the decision of the second level within ten work days after receipt of the response to the deputy director. Within fifteen work days after receipt of the appeal, the deputy director shall respond in writing to the grievance.
5. Level 4. The grievant may appeal the decision of the third level within ten work days after receipt of the response to the Director, California Department of Human Resources (CalHR) or his/her designee. Within twenty work days the Director or his/her designee shall respond in writing to the grievance.

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## Grievance Procedure (also see Merit Appeals), Continued

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### Non-merit statutory appeals procedures

Non-merit statutory appeals procedures may include the following steps.

1. The following disputes shall be filed in writing directly with the Director of CalHR. Such appeals shall be filed in accordance with specific time limits proscribed by applicable statute:
  - appeals of layoff
  - appeals of transfer
  - petitions to set aside resignation
  - appeals for reinstatement after automatic resignation
2. Such appeal may be assigned to a hearing officer for hearing or investigation. The hearing officer is the authorized representative of the Director of CalHR and is fully authorized and empowered to:
  - grant or refuse extensions of time
  - set the matter for hearing
  - conduct a hearing or investigation
  - take any other action under their jurisdiction
3. Answer. Unless required by law or regulations, no answer to the appeal need be filed.
  - If an answer is filed prior to the hearing, a copy must be mailed by the Director of CalHR to the appellant
  - If no answer is filed and none is required, every material allegation of the appeal is an issue
4. Rehearing.
  - Within 30 days after service of a copy of the decision any party may file a written petition for rehearing with the Director of CalHR.
  - Within 30 days after such filing, the Director of CalHR shall serve a copy of the petition upon other parties to the proceeding.
  - Within 60 days after service of the petition for rehearing, the Director of CalHR shall either grant or deny the petition in whole or in part.

Failure to act upon a petition for rehearing within the 90-day period is a denial of petition.

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## Grievance Procedure (also see Merit Appeals), Continued

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### Non-merit statutory appeals procedures (continued)

5. Any appeal referred or assigned to the Director of CalHR shall be dismissed unless it is brought to hearing within three years after such appeal was filed, except where the parties have filed a written stipulation specifically extending said three-year period.
  6. Decision. Every decision shall become final thirty days after service by the Director of CalHR of a copy of such decision upon the parties to the proceeding in which the decision is rendered, unless a proper application for rehearing is made in accordance with subsection (g)(3) of Article 21,
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### Out-of-class procedures

The primary type of grievance, which can impact the Office of Human Resources (OHR) Personnel Operations, Classification and Pay (C&P) Unit staff is an out-of-class grievance.

While administration of such a grievance is the responsibility of LR, the C&P Unit makes the classification decisions for DGS and its client agencies. Therefore, supervisors, managers and the LR can be expected to refer such grievance issues to the C&P Unit for the limited purpose of advising the grievance decision-maker concerning the extent to which out-of-class work may have occurred. (See Out-of-Class section in this manual for additional information.)

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### Attachments

<http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std630.pdf>  
<http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std631.pdf>

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