

INTERNAL COMPLAINT PROCEDURE
Department Agriculture
July 2003

1.1 POLICY

The general public and DOA employees shall be allowed to file complaints on personnel or employment actions affecting them and have the complaints addressed in an informal and timely manner through this Internal Complaint Procedure.

1.2 SCOPE

This Procedure applies to personnel or employment actions that are not covered by collective bargaining or other established procedures, and are taken by the Director of the Department of Human Resources Development (DHRD), the Director of the Department of Agriculture (DOA), or a designee acting on behalf of either Directors relating to:

A. Recruitment

Actions taken in recruiting applicants for employment, in receiving and reviewing applications, or in referring eligible applicants to DOA programs for employment consideration.

B. Examination

Actions taken in testing the qualifications of an applicant, including the initial probationary period. These may include but are not limited to: written tests, oral tests, interviews, essays, tests of physical fitness or ability, medical examinations, performance tests, training and experience evaluations, background and suitability determinations, in-basket assessment, biodata assessments, personality measures and assessment centers. Examination also includes termination for failure to successfully complete the initial probationary period.

C. Classification/Reclassification

Actions taken in assigning a civil service position to a class based on the kind and level of work performed and knowledge, skills, competencies, and qualifications required.

D. Initial Pricing of Classes

Actions taken in assigning a new class to a pay grade/range.

E. Other Adverse Personnel/Employment Actions Against Civil Service Employees Who Are Excluded From Collective Bargaining Coverage

Actions include failure to meet work performance requirements, demotion, suspension, termination, and other similar adverse personnel/employment actions against excluded civil service employees.

F. Other Adverse Personnel/Employment Actions That Cannot Be Addressed Through The Collective Bargaining Process

Any disciplinary actions taken during an initial probationary period.

Note: This Procedure is not applicable to matters covered by collective bargaining grievance procedures or matters that are covered by other established and/or existing procedures, e.g., Premium Conversion Plan procedures.

1.3 PERSONS ELIGIBLE TO FILE COMPLAINTS AND COMPLAINT FILING TIME PERIODS

Any of the following persons shall be entitled to file a complaint within the specified time period.

A. Recruitment

A person who has filed an application for a vacant civil service position and alleges improper recruitment action. The complaint shall be filed within seven (7) working days after the date of notice of the recruitment action.

B. Examination

1. An applicant who receives notification of failure to meet minimum qualifications for the class and/or position or for public employment requirements for which a formal application was filed.
2. An applicant who receives notification of an unsatisfactory examination score.
3. An applicant who receives notification of non-selection for a civil service position.

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4. An applicant who receives notification of unsuitability for public employment and/or a specific class of work that he/she applied for.
5. An included or excluded employee serving an initial probationary appointment in a civil service position who is terminated for failure to successfully complete the initial probation or is disciplined for non-work performance matters.

The complaint shall be filed within seven (7) working days after the date of notice of the examination action.

C. Classification/Reclassification

The civil service employee occupying the position as of the effective date of the classification action and any subsequent civil service employee in the position up to the date of notice of final action who believes the classification action was improper. The complaint shall be filed within twenty (20) working days after the date of notice of the classification or reclassification action issued by the office taking the action.

D. Initial Pricing Of Classes

The civil service incumbent of a position in a new class as of the effective date of the initial pricing action who alleges an improper pricing action. The complaint shall be filed within twenty (20) working days after the date of notice of the pricing action issued by DHRD.

E. Other Adverse Personnel/Employment Actions Against Excluded Civil Service Employees

A civil service employee who is excluded from collective bargaining coverage under §89-6, Hawaii Revised Statutes, who alleges improper performance evaluation action, suspension, demotion, termination, or any other personnel/employment action that the employee believes is improper. The complaint shall be filed within ten (10) working days after the date of notice of the final adverse personnel/employment action.

F. Other Adverse Personnel/Employment Actions Against An Employee That Cannot Be Grieved Through The Collective Bargaining Grievance Process

An employee who believes that his/her rights have been violated and cannot grieve the personnel/employment action through the collective bargaining

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process or who is ineligible to file a grievance through the collective bargaining process. The complaint shall be filed within ten (10) working days after the date of notice of the final adverse personnel/employment action.

- G. DOA may, at its discretion, extend the time frames and/or waive other requirements noted above for good cause.

1.4 COMPLAINT FILING REQUIREMENTS AND COMPLAINT DISPOSITION

- A. A complaint shall be typed or legibly hand-written on the Internal Complaint Form (Attachment A). The complaint shall be filed with the DOA Departmental Personnel Officer (DPO). For the following specific complaints, the Internal Complaint Form shall be supplemented with:

1. DHRD Form 276 for Initial Pricing complaints.
2. DHRD Form 259 for Classification/Reclassification complaints.

- B. Upon receipt of the complaint, the DOA DPO shall review the complaint and take any of the following appropriate action:

1. Refer and forward the complaint to DHRD if the matter is within the authority of the Director of DHRD, and notify the complainant accordingly.
2. Refer and forward the complaint to the appropriate agency, if known, provided it is not within the authority of the DHRD Director or the DOA Director to act on it, and notify the complainant accordingly.
3. Refer and forward the complaint to the appropriate individual at the lowest level who has the authority to act on the complaint, and such individual shall notify the complainant.
4. Return the complaint to the complainant if it is covered by the collective bargaining grievance procedure and not under jurisdiction of the Merit Appeals Board (MAB) or if the complainant already filed a grievance. If the complainant disputes whether the complaint involves matters subject to collective bargaining grievance procedures, the DOA DPO shall inform the complainant that he/she may submit the matter to the Hawaii Labor Relations Board pursuant to the Board's rules of practice and procedure.

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- C. The appropriate individual who has the authority to act on the complaint shall, within thirty (30) calendar days of its receipt, notify the complainant of the progress of processing the complaint. As soon as practicable thereafter, the Internal Complaint Procedure shall culminate in a written decision by the DOA Director or other appropriate authority who is assigned responsibility for making the final decision on the complaint.
- D. If the complaint is denied and the issues involve matters under jurisdiction of MAB, information on filing a formal appeal with MAB shall accompany the written decision.
- E. If the complaint is denied and the issues do not involve matters under jurisdiction of MAB, the decision on the complaint shall be final and binding, unless the complaint will be under jurisdiction of another body or agency.

1.5 GENERAL PROVISIONS

- A. If the complainant is not an employee, all proceedings for handling the complaint shall, as far as practicable, be conducted during office hours.
- B. If the complainant is an employee, all proceedings for handling the complaint shall, as far as practicable, be conducted during the employee's work hours to permit him/her time off from work with pay.
- C. No complainant shall be coerced, discriminated against, or have reprisals taken against the complainant because he/she filed a complaint.
- D. A complainant shall have the right to be represented by a person or persons of the complainant's own choosing during the internal complaint process.
- E. The specific time limits and procedures shall be followed in processing all complaints. A complaint not filed in accordance with this Procedure or within the time limits specified within each step shall not be considered. By mutual consent of the complainant and DOA, any step as provided herein may be waived and/or the time limits within each step may be extended.
- F. This internal complaint process includes any other informal process, such as the administrative review process.
- G. DOA may waive any requirements.

1.6 APPEALS TO THE MERIT APPEALS BOARD

- A. The Internal Complaint Procedure shall be completed before an appeal is filed with MAB.
- B. MAB will not consider an appeal which encompasses an alleged violation not previously set forth in the initial complaint filed.
- C. MAB will only consider appeals pertaining to personnel/employment actions taken under Chapter 76, HRS, the Civil Service Law, and only from persons seeking employment or employed in civil service positions.
- D. MAB's disposition of an appeal shall be final and binding on all affected parties, unless the matter is appealed to the Circuit Court.
- E. If the appeal is not under the jurisdiction of MAB, but under some other administrative agency or appellate body, the complainant is responsible for filing a timely appeal with the appropriate agency, regardless of whether the Internal Complaint Procedure was used or not used.
- F. Deadlines for filing a formal appeal with MAB shall be in accordance with MAB Rules:
 - 1. Recruitment and Examination
Within twenty (20) calendar days after the date of final action or decision on the complaint.
 - 2. Classification and Reclassification
Within thirty (30) calendar days after the date of final action or decision on the complaint.
 - 3. Initial Pricing of Classes
Within thirty (30) calendar days after the date of final action or decision on the complaint.
 - 4. Other Adverse Personnel/Employment Actions Against Excluded Civil Service Employees
Within thirty (30) calendar days after the date of final action or decision on the complaint.

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- G. All appeals to MAB shall conform to all MAB rules and procedures. In the event of a conflict between the Internal Complaint Procedure and MAB rules and procedures, MAB rules and procedures shall prevail.

1.7 ADMINISTRATIVE REQUIREMENTS

A copy of the Internal Complaint Procedure shall be available to all DOA employees and the general public at the Office of the DOA Director, the Departmental Personnel Office, and at other DOA Offices, as appropriate.

1.8 REFERENCES

Chapter 76, HRS, Civil Service Law
Section 89-6, HRS, Appropriate Bargaining Units
Section 89-9, HRS, Scope of Negotiations; Consultation
Section 831-3.1, HRS, as amended, Relating to Criminal History Record Checks
Section 14-1-15, HAR, Definitions
Section 14-13.01-1, et seq., Internal Complaint Procedure
Section 14-21.1-1, et seq., State Merit Appeals Board