

MEMORANDUM

REVISION 43 SERIES D

TO: Holders of Career Service Rule Books

FROM: Career Service Board

DATE: June 22, 2018

SUBJECT: Amendments to Career Service Rule 16 and related rules – Discrimination, Harassment and Retaliation

The amendments to Career Service Rule 16 and related rules were approved by the Career Service Board on June 21, 2018 and are effective June 22, 2018. Please insert the following pages in your rule book as soon as possible. Thank you.

<u>Page Numbers to Remove</u>	<u>Page Numbers to Insert</u>
Page 16-3 Page issuance date: September 21, 2017	Page 16-3 Page issuance date: June 22, 2018
Page 16-4 Page issuance date: February 12, 2016	Page 16-4 Page issuance date: June 22, 2018
Page 16-5 Page issuance date: February 12, 2016	Page 16-5 Page issuance date: June 22, 2018
Page 16-6 Page issuance date: May 12, 2017	Page 16-6 Page issuance date: June 22, 2018
Page 16-7 Page issuance date: May 12, 2017	Page 16-7 Page issuance date: June 22, 2018
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Page 2-7 Page issuance date: September 21, 2017	Page 2-7 Page issuance date: June 22, 2018
Page 3-1 Page issuance date: September 21, 2017	Page 3-1 Page issuance date: June 22, 2018

4. Any Executive Orders governing employee conduct including, but not limited to:
 - a. Executive Order No. 16 – Use of Electronic and Communication Devices and Services
Sets terms of employee use of computers, cell phones, Internet and e-mail
 - b. Executive Order No. 55 – Department Information Centers
Regulates employee use of bulletin boards.
 - c. Executive Order No. 94 – City and County of Denver Alcohol and Drug Policy
Covers testing, training and discipline regarding employee drug and alcohol use.
 - d. Executive Order No. 112 – Violence in the Workplace
Defines improper behavior, establishes management responsibility, and discipline.

16-22 Harassment, Discrimination, and Retaliation
(Revised June 22, 2018; Rule Revision Memo 43D)

A. Protected Characteristics

Career Service employees have a right to work in an environment free of discrimination and harassment based on their race, color, religion, creed, national origin/ancestry, sex, sexual orientation, transgender status, gender identity and expression, disability, genetic information, military status, age, marital status, political affiliation, pregnancy or related condition, or any other status protected under federal, state, and/or local law. These characteristics are referred to as "Protected Characteristics". The following definitions are intended to provide assistance in interpreting the above terminology:

- Creed: a system or doctrine of religious beliefs, or a formal system or codification of beliefs about how people should live or behave.
- National origin/ancestry: the country where an employee was born, the place of origin of the employee's ancestors, the employee's ethnicity, or the physical, cultural, ethnic, or linguistic characteristics of a particular national origin or ethnic group.
- Sexual orientation: an employee's orientation toward heterosexuality, homosexuality, or bisexuality, or an employer's perception thereof.
- Gender identity: an employee's innate sense of the employee's own gender.

B. Discrimination

Discrimination occurs when an employee experiences an adverse employment action based on one or more of an employee's Protected Characteristics. Adverse employment actions include, but are not limited to, termination, suspension, involuntary demotion, and failure to promote. Adverse employment actions that are taken for any reason other than an employee's Protected Characteristic(s) are not discrimination.

Behavior may violate this Rule 16-22 B even if it would not constitute a violation of federal, state, or local law.

C. Harassment

Harassment based on one or more of an employee's Protected Characteristics is a form of prohibited discrimination. There are two types of harassment:

1. Hostile Work Environment: This type of harassment exists when an employee is subjected to unwelcome and offensive conduct by someone the employee interacts with on the job when such conduct is based on a Protected Characteristic and is sufficiently severe or pervasive as to create an intimidating, hostile, or offensive work atmosphere. In order to constitute a hostile work environment, the conduct must be:

- based on one or more Protected Characteristics; and
- subjectively offensive to the employee; and
- objectively offensive to a reasonable person; and
- severe or pervasive.

However, harassing conduct does not have to rise to the level of a hostile work environment to warrant discipline under these rules. Harassing conduct may be verbal, visual, or physical in nature, and may include derogatory comments, mocking, imitating, slurs, jokes, photographs, posters, cartoon drawings, social media content, gestures, unwanted touching, and blocking normal movement, among other forms of conduct.

2. Quid Pro Quo ("This for that"): This type of harassment exists when a supervisor takes or threatens to take an adverse employment action or withholds or threatens to withhold an employment benefit based upon a subordinate employee engaging or refusing to engage in certain behaviors (typically sexual favors). The behavior must be based on, or related to, a Protected Characteristic.

Behavior may violate this Rule 16-22 C even if it would not constitute a violation of federal, state, or local law.

D. Retaliation

Retaliation against employees for reporting or threatening to report harassment or discrimination or assisting the City in the investigation of any complaint is strictly prohibited. Retaliation can include, but is not limited to, unwarranted discipline or unfavorable performance ratings, hostility from co-workers, and escalating harassment. Any employee engaging in retaliation may be subject to discipline, up to and including dismissal.

Behavior may violate this Rule 16-22 D even if it would not constitute a violation of federal, state, or local law.

E. Reporting Alleged Discrimination, Harassment, or Retaliation

1. **Experiencing Discrimination, Harassment, or Retaliation**

a. If an employee is subjected to discriminatory, harassing, or retaliatory behavior from a co-worker, another City employee not in the employee's chain of command, or an individual the employee encounters while performing their duties who is not employed by the City, the employee is strongly encouraged to:

i. Make it clear to that person the behavior is offensive or makes the employee uncomfortable and ask that individual to stop; if the inappropriate behavior happens again, the employee must report the behavior to a supervisor and/or a human resources representative, or both; or

ii. Report the behavior to a supervisor, a human resource representative, or through any mechanism set up by the City for reporting such complaints, or all the above; or

If the individual alleged to have committed the discriminatory, harassing, or retaliatory behavior is a City employee:

iii. Request mediation by contacting OHR (see CSR §18-20); or

iv. File a grievance by completing the OHR grievance form and delivering the grievance form to the appointing authority or an HR representative of the employee's department or agency (see CSR § 18-30), unless the adverse employment action is subject to direct appeal (see CSR § 19-20 or § 20-20 (Deputy Sheriffs)).

b. If an employee is subjected to discriminatory, harassing, or retaliatory behavior from a supervisor in the employee's chain of command, the employee is encouraged to:

- i. If the employee feels comfortable doing so, address the behavior with that supervisor directly, explain that the behavior is offensive or makes the employee uncomfortable, and ask the supervisor to stop; or
 - ii. If the employee doesn't feel comfortable speaking to the supervisor directly about the behavior, or has done so already and either the behavior hasn't stopped or the employee is being subjected to retaliation, promptly contact a human resource representative or another supervisor to report the behavior; or
 - iii. Request mediation by contacting OHR (see CSR §18-20); or
 - iv. File a grievance by completing the OHR grievance form and delivering the grievance form to the appointing authority or an HR representative of the employee's department or agency (see CSR § 18-30), unless the adverse employment action is subject to direct appeal (see CSR § 19-20 or § 20-20 (Deputy Sheriffs)).
- c. Department of Safety employees may also report discriminatory, harassing, or retaliatory behavior to Safety HR or their department's Internal Affairs division.
 - d. Employees who experience an adverse employment action based on or resulting from discrimination, harassment, or retaliation by a supervisor that is subject to direct appeal may only file a direct appeal to the Hearings Office by following the procedures set forth in Rules 19 or 20 (Deputy Sheriffs). Actions that are subject to direct appeal cannot be grieved.

2. Witnessing Discrimination, Harassment, or Retaliation

If an employee witnesses discrimination, harassment, or retaliation in violation of this rule by or against any City employee, the employee must report such behavior to a supervisor, human resource representative, or both. Department of Safety employees may also report such behavior to Safety HR or their department's Internal Affairs division.

3. Receiving a Complaint of Discrimination, Harassment, or Retaliation as a Supervisor

- a. A supervisor who receives a report of discrimination, harassment, or retaliation must notify a human resource representative immediately or as soon as practicable.
- b. Supervisors are also strongly encouraged (and may be required by their department's policy) to notify their department's appointing authority or a supervisor in their chain of command

about the report, particularly if the allegation involves discrimination, harassment or retaliation by a supervisor against a subordinate employee.

- c. Supervisors should not investigate the allegations unless directed to do so by human resources, or as required by their department's policy.
- d. Supervisors should keep allegations as confidential as possible and only share information about the reported allegations on a need-to-know basis, such as with their department's appointing authority, a supervisor in their chain of command, or a human resource representative. Supervisors in the Department of Safety that receive complaints of discrimination, harassment, or retaliation may share that information with their department's Internal Affairs division.

F. Actions Taken in Response to Allegations of Discrimination, Harassment or Retaliation

All allegations of discrimination, harassment, and retaliation will be promptly investigated in accordance with Rule 18-40. Pending the outcome of the investigation, appropriate precautionary steps may be taken to separate and/or restrict contact between the alleged perpetrator and alleged victim, which may include placing the alleged perpetrator on paid investigatory leave. Absent extenuating circumstances and approval of the City Attorney's Office, the alleged victim shall not be negatively impacted by those precautionary steps. After the investigation is concluded, appropriate remedial action will be taken, which may include discipline or dismissal of the employee who engaged in the discrimination, harassment or retaliation.

16-23 Employee Responsibility to Report Charges, Convictions, and Nolo Contendere Pleas

(Re-numbered June 22, 2018; Rule Revision Memo 43D)

The employee or the employee's representative shall report criminal charges and convictions, and nolo contendere pleas (no contest pleas) to the employee's appointing authority as soon as possible as required by this section, but no later than three (3) calendar days after the occurrence.

A. Offenses that must be reported:

- 1. All employees who are charged with, have entered a plea of guilty or nolo contendere on, or are convicted of any felony, misdemeanor, or any other offense which involves violence against persons, destruction of property, dishonesty, theft, or the sale or possession of illegal drugs, must report such charges, pleas, or convictions to their appointing authority.

2. In addition to the requirement set forth in subsection 1, any employee who operates a motor vehicle as part of his or her job assignment must report any citation for traffic violations, whether received on or off the job (this does not apply to parking violations).
3. Additional reporting requirements may be established by a department or agency consistent with business necessity. Such additional requirements must first be approved by the Office of Human Resources ("OHR") and approved for legality by the City Attorney's Office.

B. A conviction is the adjudication of a criminal charge through:

1. A guilty plea;
2. The acceptance of a plea bargain;
3. A finding of guilty by a judge or jury;
4. The acceptance of a deferred sentence or deferred judgment; or
5. A plea where a defendant enters a guilty plea without actually admitting guilt (Alford plea).

C. Contemplating or Imposing Discipline on an Employee Convicted of or Charged with a Crime

After notification that an employee has been charged with or convicted of a crime, the appointing authority shall follow the guidelines described below:

1. If an employee has been charged with a crime, before imposing discipline, the department or agency must determine whether there is a preponderance of evidence demonstrating that the employee engaged in the conduct which forms the factual basis for the crime with which the employee is charged. The department or agency must also consider: the nature and type of the conduct which supports the charge; the nature of the position the employee holds in the City and the relationship of the position to the facts underlying the charge; and the impact of the facts on the employee's ability to perform the position.
2. If an employee has been convicted of a crime, before imposing discipline, the department or agency must consider: the nature and type of crime for which the person has been convicted; the facts underlying the crime; the nature of the position the employee holds in the City and the relationship of the position to the crime; the impact of the facts on the employee's ability to perform the position; and any evidence of rehabilitation.

D. Record-keeping:

Records of criminal charges or convictions resulting from an employee's reporting shall not be included in the employee's personnel file unless and until disciplinary action has been taken pursuant to this Rule 16.

16-24 Use of City Facilities

(Re-numbered June 22, 2018; Rule Revision Memo 43D)

Employees may not solicit or distribute any non-job-related material of any kind during working time on City property except for designated City programs.

16-25 Political Activities

(Re-numbered June 22, 2018; Rule Revision Memo 43D)

- A. Employees are prohibited from engaging in political activities during working hours. Employees also are prohibited from using City facilities and/or resources in connection with campaigns or other political activities.
- B. City facilities and/or resources may not be used to solicit:
 - 1. Monetary political contributions; or
 - 2. Any other contribution of services or resources for political purposes from any officer or employee.
- C. Employees shall not engage in the following activities at any time:
 - 1. Taking any action or making any promise or threat of action to any employee because of the employee's giving or the withholding of a political contribution or service; or
 - 2. Engaging in solicitation or politically motivated behavior that is harassing or discriminatory.

16-26 Employee Organizations and Representation

(Re-numbered June 22, 2018; Rule Revision Memo 43D)

- A. Career Service employees shall have the right to join or refrain from joining any organization of employees. No employee or applicant may be discriminated against, harassed or retaliated against because such person belongs, or does not belong, to a union or other employee organization.
- B. Employees shall not:
 - 1. Coerce or attempt to coerce any other employee to join or refrain from joining a union or other employee organization; or
 - 2. Accept or offer gratuities, prizes, or other valuable items for influencing any employee to join or refrain from joining, or to vote for or against, a union or employee organization.
- C. Employees in supervisory or management positions shall not make any effort to obtain members or votes for a union or any employee association.

- D. The representative of an employee, including officers and business agents of unions or other associations to which an employee belongs, shall be given the same rights to speak on behalf of the employee as would be given the employee at the following meetings:
1. Contemplation of discipline meetings required under this Rule 16;
 2. Contemplation of disqualification meetings required under Rule 14 **SEPARATION OTHER THAN DISMISSAL**; and
 3. Meetings to discuss an “Unacceptable” rating required under Rule 13 **PAY FOR PERFORMANCE**. (Revised May 12, 2017; Rule Revision Memo 26D)

This right to representation does not extend to meetings related to the normal business activities of the department or agency, such as staff meetings.

- E. The complainant and the accused may each have a representative present while being interviewed during an investigation conducted pursuant to Rule 18 **DISPUTE RESOLUTION**. However, the representative may not answer interview questions on behalf of the interviewee unless requested to do so by the interviewer.

F. Counseling Employees During Working Hours

A representative of an employee organization may visit an employee during working hours if the representative obtains the permission of the employee’s immediate supervisor and such visitation does not interfere with the work of the agency.

G. Designation of Representative

1. Employees shall identify, in writing, to the person who signed the contemplation of discipline letter and the agency human resources representative, agents to represent them in a contemplation of discipline meeting, a contemplation of disqualification meeting, a meeting to discuss an “Unacceptable” rating, or in presenting a grievance or appeal. (Revised May 12, 2017; Rule Revision Memo 26D)
2. No employee may be compelled to act as the representative of another employee.
3. If the representative is also a City employee, he or she shall be allowed, with the prior approval of his or her supervisor, to take up to a maximum of four (4) hours of approved administrative leave per pay period and use any accrued paid time off, vacation leave or compensatory time, or to take leave without pay to represent employees. Any such leave shall not adversely impact the agency or department and must be approved in advance.

16-27 Recording Devices in the Workplace
(Re-numbered June 22, 2018; Rule Revision Memo 43D)

Employees shall not record audio or video during work hours, when on City premises, when speaking to a City employee by phone, or when on City business without the prior permission of the employee's appointing authority.

16-28 Grounds for Discipline
(Re-numbered June 22, 2018; Rule Revision Memo 43D)

The following may be cause for the discipline or dismissal of a Career Service employee:

- A. Neglect of duty or carelessness in performance of duties and responsibilities.
- B. Theft, destruction, or neglect in the use of City property; or property or materials of any other person or entity.
- C. Unauthorized operation or use of any vehicles, machines, or equipment of the City, or of any entity having a contract with the City, including, but not limited to, the unauthorized use of the internet, e-mail, or telephones.
- D. Any act of dishonesty, which may include, but is not limited to, lying, or improperly altering or falsifying records, examination answers, or work hours.
- E. Accepting, soliciting, or making a bribe, or using official position or authority for personal profit or advantage, including kickbacks.
- F. Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.
- G.
 - 1. Failing to meet established standards of performance including either qualitative or quantitative standards. When citing this subsection, a department or agency must describe the specific standard(s) the employee has failed to meet, such as standards in the employee's individual goals or in a Performance Improvement Plan (PIP). (Revised May 12, 2017; Rule Revision Memo 26D)
 - 2. Any employee who receives an "Unacceptable" performance rating and fails to correct his or her performance in the subsequent PIP (or PIPs), is considered to have been given an adequate opportunity to correct his or her behavior and may be dismissed without his or her appointing authority first being required to resort to progressive discipline. (Revised May 12, 2017; Rule Revision Memo 26D)
- H. Intimidation or retaliation against an individual who has been identified as a witness, party, or representative of any party to any hearing or investigation relating to any disciplinary procedure, or any violation of a city, state, or federal rule, regulation or law, or against an employee who has used the dispute resolution process in good faith.

- I. Failure to maintain satisfactory working relationships with co-workers and other individuals the employee interacts with as part of his or her job.
- J. Being charged with or convicted of a crime, or entering a plea of guilty or nolo contendere to a crime. Before imposing discipline under this subsection, the department or agency shall follow the guidelines contained in subsection 16-23.
- K. Failure to report charges of, pleas to, or convictions of crimes as required by this Rule 16.
- L. Discrimination or harassment as defined in this Rule 16. This includes making derogatory statements based on race, color, religion, national origin, sex, sexual orientation, gender identity and expression, disability, genetic information, military status, age, marital status, political affiliation, or any other status protected under federal, state, and/or local law. This prohibited conduct need not rise to the level of a violation of any relevant local, state or federal law before an employee may be disciplined and the imposition of such discipline does not constitute an admission that the City violated any law. (Revised September 21, 2017; Rule Revision Memo 28D)
- M. Unauthorized absence from work; or abuse of paid time off, sick leave, or other types of leave; or violation of any rules relating to any forms of leave.
- N. Unauthorized deviation from scheduled shift including reporting to work after the scheduled start time of the shift, leaving work before the end time of the shift, or working unauthorized overtime.
- O. Failure to use safety devices or failure to observe safety regulations.
- P. Engaging in a strike, sabotage, or work slowdown.
- Q. Divulging confidential or otherwise sensitive information to unauthorized individuals.
- R. Conduct which violates the Career Service Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, written departmental or agency regulations, policies or rules, or any other applicable legal authority. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.
- S. Refusal to cooperate, including refusing to provide requested information and materials relevant to the investigation.
- T. Conduct which is or could foreseeably:
 - 1. Be prejudicial to the good order and effectiveness of the department or agency;
 - 2. Bring disrepute on or compromises the integrity of the City; or
 - 3. Be unbecoming of a City employee.

Section 16-30 Investigatory Leave with Pay

- A. An appointing authority may place an employee on investigatory leave with pay for up to forty-five (45) days pending an investigation of a possible rule violation or failure to meet standards of performance when it is determined by the appointing authority that it is in the best interest of the City. It may include the period of time required to complete the investigation, to conduct a contemplation of discipline meeting, and to render a decision regarding discipline.
- B. If the investigation has not been completed within the forty-five (45) calendar day time period, the appointing authority may request from the OHR Executive Director an extension of time appropriate to complete the investigation and render a decision. The OHR Executive Director may approve a request for an extension for good cause shown. Additional extensions may be granted at the discretion of the OHR Executive Director. The appointing authority shall notify the employee of any extension that is granted by the OHR Executive Director.
- C. The appointing authority may require the employee to remain at home and/or be available by telephone; to participate in the investigatory process and/or to perform work during their normal work hours; or to return to work prior to the end of the period of investigatory leave. Normal work hours may be changed when an employee on investigatory leave needs to be available at a time the employee is not normally scheduled to work. If an employee is unable to meet these requirements, or chooses to attend to personal business during his or her normal hours of work, the appointing authority's regular procedures regarding the use of leave shall apply.

Section 16-40 Disciplinary Process

16-41 Purpose of discipline

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record. The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

16-42 Progressive Discipline

- A.
 - 1. Whenever practicable, discipline shall be progressive. However, any measure of discipline may be used in any given situation as appropriate.
 - 2. Failure to correct behavior or committing additional violations after progressive discipline has been taken may subject the employee to further discipline, up to and including dismissal from employment.
 - 3. An employee may be dismissed without prior discipline if the facts of that employee's case warrant dismissal.

- B. In order of increasing severity, the disciplinary actions which an appointing authority may take against an employee for violation of the Career Service Rules, the City Charter, or the Denver Revised Municipal Code, Executive orders, or any other applicable legal authority include:
1. Written reprimand.
 2. Suspension without pay, or involuntary temporary reduction of pay.
 3. Involuntary demotion pursuant to Rule 9 **PAY ADMINISTRATION**.
 4. Dismissal.
- C. Nothing in this rule should be interpreted to preclude an appointing authority from counseling and coaching employees about performance and discipline issues. Appointing authorities are encouraged to document the date and subject of the conversation in the supervisor's file.

16-43 Form for Written Reprimand

- A. Written reprimands shall contain the following:
1. The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules, with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance; and
 2. A notice that the employee may file a grievance on the written reprimand and may also seek mediation in accordance with Rule 18 **DISPUTE RESOLUTION**.
- B. A written reprimand shall be sent to the OHR for inclusion in the employee's personnel file.

16-44 Guidelines for Involuntary Temporary Reduction of Pay

When an involuntary temporary reduction in pay is imposed on an employee, the employee's pay shall not be reduced:

- A. More than fifteen percent (15%); or
- B. Below the range minimum of the employee's pay range; or
- C. For less than one (1) pay period; or
- D. For more than thirteen (13) pay periods; or
- E. Below the minimum wage.

Any merit increase or merit payment shall be based on the employee's normal rate of pay, not the employee's temporarily reduced rate of pay.

16-45 Procedure for Dismissal

- A. The appointing authority shall give an employee written notice of dismissal on or before the employee's last day as a City employee.
- B. Dismissed employees are not eligible for future employment in the Career Service for a minimum of five years following such dismissal. The OHR Executive Director shall establish procedures governing how dismissed employees may be placed on eligible lists after the five years have elapsed.
- C. Current address: It is the responsibility of each Career Service employee to ensure that official personnel records of the City reflect the employee's current mailing address, current residence address and telephone number at all times.
- D.
 - 1. An employee holding on call, paid trainee, paid intern, or employment probationary status may be dismissed at any time. Such action may only be appealed when the employee has alleged a violation of the "Whistleblower Protection" ordinance, in accordance with Rule 19 **APPEALS**.
 - 2. The notice of dismissal for an on call, paid trainee, paid intern, or employment probationary status employee shall identify the violations or failures to meet performance standards with sufficient detail so as to enable the employee to understand the basis for the dismissal. The notice of dismissal shall also contain a statement that the employee may appeal the dismissal only on the ground of an alleged violation of the "Whistleblower Protection" ordinance.
 - 3. The appointing authority is not required to hold a contemplation of discipline meeting before dismissing an employee holding on call, paid trainee, paid intern, or employment probationary status.

16-46 Contemplation of Discipline

- A. Before an employee with career status is suspended, given an involuntary temporary reduction in pay, involuntarily demoted, or dismissed, the appointing authority shall hold a contemplation of discipline meeting. A contemplation of discipline meeting is not required for written reprimands.
- B. The purposes of the contemplation of discipline meeting are to allow an employee to:
 - 1. Correct any errors in the department or agency's information or facts upon which it contemplates taking disciplinary action; and

2. Tell his or her side of the story and present any mitigating information as to why the disciplinary action should not be taken
- C. Since a contemplation of discipline meeting is not an administrative hearing, witness testimony is not allowed.
- D. Employees must be served with written notice seven (7) calendar days before the contemplation of discipline meeting. The seven (7) calendar day notice period starts on the day after the date shown on the certificate of hand delivery or mailing, or on the e-mail.
- E. The written notice of the contemplation of discipline meeting shall contain the following information:
1. That disciplinary action is contemplated;
 2. The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance;
 3. The purpose of the contemplation of discipline meeting as described in this Rule 16;
 4. The date, time, and location of the contemplation of discipline meeting; and
 5. That the employee is entitled to have a representative of his or her own choosing present at the meeting.
- F. The department or agency may approve or deny requests to re-schedule contemplation of discipline meetings.

16-47 Notices of Discipline

- A. In addition to the information that must be part of written reprimands, written notices of suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal shall also:
1. Contain a reference to the opportunity afforded the employee to tell his or her side of the story in accordance with this Rule 16 and that the information presented at the contemplation of discipline meeting was considered by the department or agency in reaching a determination.
 2. Contain a notice that the employee may appeal the suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal pursuant to Rule 19 **APPEALS**.

- B. The specific conduct or omissions listed on the written notice of discipline shall be the same as those listed in the contemplation of discipline letter, except for any charges or violations which were subsequently dropped.
- C. A notice of suspension, involuntary temporary reduction of pay, involuntary demotion, and dismissal shall be sent to the OHR for inclusion in the employee's personnel file, along with a completed personnel action form.
- D. Failure of a supervisor or appointing authority to comply strictly with the provisions of this section shall not constitute a basis for reversing a disciplinary action on appeal unless the employee shows that his or her rights were substantially violated by the lack of compliance.

16-48 Disciplinary Action Following Contemplation of Discipline Meeting

- A. Personnel decisions relating to progressive discipline may take into account prior disciplinary action, including documented coaching and counseling.
- B. A written notice of the disciplinary decision and the reasons for the disciplinary action based on the contemplation of discipline meeting and other pertinent information obtained by the appointing authority shall be served on the employee within twenty-one (21) calendar days after the meeting. The notice shall be considered served on the date shown on the certificate of hand delivery or mailing, or on the e-mail.
- C. If an appointing authority presents to the OHR Executive Director documented extenuating circumstances requiring additional time, the OHR Executive Director may extend the date for taking disciplinary action for an additional seven (7) calendar days. A request for an extension of time must be sent to the OHR Executive Director before the expiration of the time for taking disciplinary action. If disciplinary action is not taken within the initial time period and a request for extension of time is not timely submitted to the OHR Executive Director, the agency must repeat the steps contained in section 16-40 before disciplinary action may be taken.
- D.
 - 1. An employee may file a grievance of a written reprimand in accordance with Rule 18 **DISPUTE RESOLUTION**. An employee may not appeal a written reprimand to the Career Service Hearings Office.
 - 2. An employee may directly appeal a suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal in accordance with Rule 19 **APPEALS**.

D. Computation of Time:

The period of time shall be computed as follows (all time periods are calendar days):

1. The date of notification of the action or inaction shall be the date the employee knew or should have known of the action or inaction.
2. The period of time for filing the grievance starts on the day following the date of notice of the action or inaction.
3. The date for responding to a grievance starts on the day following receipt of the grievance.
4. If the final date for filing or responding to a grievance falls on a day the OHR is not open for business, the final date shall be the next working day.
5. The grievance filing or response period ends at 5:00 p.m. on the final date.

E. Failure to Implement Remedy Granted in a Grievance Response:

If a remedy is granted in the grievance response, and the department or agency fails to implement it, the employee must notify the department or agency designee in writing of their intent to file an appeal within seven (7) calendar days following the date the employee knew or should have known of the department or agency's failure to implement the remedy. If the department/agency designee fails to implement the remedy within fourteen (14) calendar days, the employee may appeal to the Hearing Officer in accordance with the provisions of Rule 19 **APPEALS**.

18-31 Grievances of Alleged Discrimination, Harassment, or Retaliation
(Revised June 22, 2018; Rule Revision Memo 43D)

Grievances that allege discrimination, harassment, or retaliation, when the underlying action is not subject to a direct appeal, shall follow the standard grievance procedure, except as modified below.

- A. Deadlines: The deadlines for filing a grievance and responding to such a grievance shall not apply when the grievance alleges discrimination, harassment, or retaliation. Employees who experience or witness discriminatory, harassing, or retaliatory behavior are urged to report such behavior promptly so it can be investigated and addressed.
- B. Employees who experience discrimination, harassment, or retaliation in violation of these rules, are urged to follow the reporting procedures in Rule 16-23.

Section 18-40 Investigations

- A. The agency (or the entity or individual designated by the agency) will conduct a timely investigation, as appropriate, concerning any allegations of harassment, discrimination, or violence in the workplace, in violation of these rules.
- B. Employees subject to an investigation under this Rule 18 regarding misconduct shall be provided with a Garrity Advisement when there is potential criminal wrongdoing. The Garrity Advisement will be administered by the investigator. A Garrity Advisement advises an employee:
 - 1. The purpose of the questioning is to obtain information which will be used to determine whether disciplinary action is warranted;
 - 2. The purpose of the questioning is not to initiate criminal proceedings;
 - 3. In the event the employee discloses information which indicates he or she may be guilty of criminal conduct, neither the self-incriminating statements, nor the fruits thereof, will be used against him or her in any criminal proceeding;
 - 4. The employee must answer each question or face dismissal; and
 - 5. The employee has the right to resign immediately instead of being questioned.
- C. Evidence gathered through the investigation can only be used in a civil proceeding, even if the Garrity Advisement was not administered.
- D. The determination of the investigation regarding the alleged harassment, discrimination, or violence in the workplace, will be communicated to the complaining employee as soon as practicable.
- E. The agency will take action, as deemed appropriate, based on the outcome of the investigation.

2. Proceedings of a mandatory hearing shall be recorded, but need not be transcribed unless required in litigation. If a transcript is required, the party requesting the transcript shall pay the costs.
3. At the discretion of the Board, hearings may be continued for good cause.

Section 2-40 OHR Executive Director

A. Powers and Duties:

The OHR Executive Director shall serve at the pleasure of the Board, report directly to the Board, and perform all duties and responsibilities as directed by the Board, including those contained in these Rules, and as delegated by the Denver Revised Municipal Code. In addition, the OHR Executive Director's powers and duties are:

1. To interpret and enforce the Rules adopted by the Board in such a manner as to promote and maintain the principles of a merit-based personnel system and the just, speedy and effective resolution of disputes (Revised January 22, 2010; Rule Revision Memo 44C);
2. To prepare and administer examinations, determine qualifications of applicants, establish eligible lists and refer eligible applicants to appointing authorities to fill vacancies;
3. To establish and maintain a roster of all Career Service employees;
4. To establish and maintain such records, forms and procedures as necessary to control personnel actions;
5. To consider reasonable suggestions from appointing authorities, the public, and employees or their representatives, pertaining to any phase of the personnel program;
6. To delegate to a designee such duties as, in his/her opinion are appropriate, unless otherwise specifically provided in these rules;
7. To administer the Education Refund Program in accordance with the Denver Revised Municipal Code; and
8. To perform such other duties as may be necessary to foster and maintain a merit-based personnel system for the Career Service, further equal employment opportunity for all employees and applicants without regard to the Protected Characteristics as defined in Rule 16-22, or otherwise ensure the efficient operation of OHR. (Revised June 22, 2018; Rule Revision Memo 43D)

B. Normal Working Hours:

The OHR Executive Director shall keep the OHR open for business from 8:00

RULE 3
RECRUITMENT AND SELECTION
(Revised January 3, 2017; Rule Revision Memo 23D)

Purpose statement:

The purpose of this rule is to provide policy and practices for an efficient and consistent competitive hiring process that promotes both equal employment opportunity without regard to the Protected Characteristics as defined in Rule 16-22 and a highly productive, engaged workforce. (Revised June 22, 2018; Rule Revision Memo 43D)

As defined in the City Charter, the Office of Human Resources (OHR) oversees and administers hiring principles and practices, made on the basis of merit and ability for all Career Service system jobs.

Career Service employees have a right to work in an environment free of discrimination and harassment because of any status protected by federal, state or local laws (see Rule 16 **CODE OF CONDUCT AND DISCIPLINE**).

Section 3-5 Accommodation Pursuant to the Americans with Disabilities Act (ADA)

Upon request, the OHR will work with a qualified individual with a disability, as defined in the ADA, in a good faith effort to make necessary reasonable accommodations related to the application, assessment, test, interview, and any other aspect of the hiring process. A documented medical need for accommodation, prepared and signed by a health care provider, may be required.

Section 3-10 Definitions

- A. Agency Hiring Authority: The person in an agency or department who is responsible for the final hiring decision.
- B. Agency Hiring Manager: The person in an agency or department who is the primary contact for the OHR throughout the recruit-to-hire process.
- C. Applicant: The person who submits an application for employment in the City's applicant tracking system.
- D. Assessment: A tool to measure competencies and work behaviors that predict successful performance on the job such as customer focus and reliability.
- E. Candidate: The applicant who meets qualifications and is referred by OHR to an Agency Hiring Authority and/or Hiring Manager for review and consideration for a job opening.