

## CHAPTER 14

### PERFORMANCE MANAGEMENT

#### **EMERGENCY RULES ARE NO LONGER IN EFFECT 120 DAYS AFTER FILING WITH THE SECRETARY OF STATE**

##### **Section 1. Performance Management.**

Performance management shall be administered by the Human Resources Division.

##### **Section 2. Coverage.**

All probationary and permanent employees shall be evaluated. Positions exempt from this coverage include:

- (i) Elected State Officials
- (ii) At-Will Agency Heads
- (iii) Contractual Employees
- (iv) Emergency
- (v) Temporary
- (vi) Interns
- (vii) Intermittent
- (viii) Other Positions as Approved by the Human

Resources Administrator

##### **Section 3. Responsibility of Agency Heads.**

Agency heads shall be responsible for performance management within their agencies in accordance with the established personnel rules and policies. Agency heads shall ensure that each employee is evaluated on job-related performance criteria.

##### **Section 4. Performance Management Focal Date.**

(a) All covered employees shall have a common focal date upon which all employees' performance evaluations shall be completed. The focal date shall be designated by the Human Resources Division.

(b) All employees shall receive an evaluation prior to a change in evaluators or moving to a position in another agency if the change is within ninety (90) days of the focal date.

(c) Whenever concerns over an employee's performance arise, additional evaluations and a performance improvement plan may be conducted at anytime

between focal dates at the discretion of the evaluator or the agency head.

#### Section 5. **Probation and At-Will Status.**

Conducting performance evaluations on probationary employees will in no way alter or change their at-will status during their probationary periods. Upon the successful completion of the probationary period, the employee shall receive a permanent appointment. Conducting performance evaluations on at-will status employees will in no way alter or change their at-will status.

**A probationary employee is an at-will employee who has no expectation of continued employment and may be dismissed at anytime during the probationary period without cause or reason.**

#### Section 6. **Evaluators.**

(a) Primary evaluator. The primary evaluator shall be the immediate supervisor of the employee. An evaluator shall have at least ninety (90) days of direct supervision of the employee. If this is not possible due to extenuating circumstances, the agency head shall determine the appropriate evaluator. The ninety (90) days of direct supervision of the employee shall not apply to Section 12 (b) and (c) of this chapter.

(b) Qualification. The evaluator shall have completed training on performance management as prescribed by the Human Resources Division.

(c) Multiple evaluators may be used where designated by the agency. Each evaluator shall meet the requirements above. The multiple evaluators shall jointly complete one (1) annual Performance Evaluation for each employee.

#### Section 7. **Performance Evaluation Form.**

The employee shall be evaluated on a Performance Evaluation Form approved by the Human Resources Division.

#### Section 8. **Performance Planning.**

At the beginning of the performance evaluation period, the evaluator shall clarify to the employee the goals, projects, work activities and competencies for the evaluation period. Any significant change that occurs during an evaluation period shall be documented and discussed with the employee.

### **Section 9. Workplace Coaching.**

The evaluator shall provide the employee with continuous workplace coaching throughout the performance evaluation period. The evaluator shall conduct and document at least one workplace coaching session with the employee during the evaluation period.

### **Section 10. Performance Evaluation.**

The evaluator shall conduct and discuss the performance evaluation with the employee. The evaluation shall be documented on the Performance Evaluation Form. The employee shall be given the opportunity to comment and document the outcome of the performance evaluation.

### **Section 11. Performance Improvement Plan.**

If the employee's overall performance is rated as "unsatisfactory", the evaluator shall discuss and document the performance deficiencies requiring improvement and immediately provide the employee with a written performance improvement plan not to exceed forty-five (45) days. At the conclusion of the forty-five (45) day performance improvement plan and if the employee is rated as "unsatisfactory", the employee shall be reevaluated on the Performance Evaluation Form. A second and final Performance Improvement Plan may be developed within the evaluation period. The final Performance Improvement Plan shall not exceed forty-five (45) days in duration and may be closed at any time prior to the expiration of forty-five (45) days if other action is taken. Appropriate corrective or disciplinary action may begin and/or continue during either Performance Improvement Plan period. Disciplinary action shall be taken at the conclusion of the second and final Performance Improvement Plan upon an employee's evaluation rating of "unsatisfactory". Any changes in the position necessitating significant changes in the Performance Improvement Plan that occur during the evaluation period shall be discussed between the evaluator and the employee and documented on the Performance Evaluation Form.

### **Section 12. Reevaluation of "Unsatisfactory" Rating.**

(a) The evaluator shall reevaluate the employee after a written performance improvement plan has been implemented and not more than forty-five (45) days after the overall work performance has been determined as "unsatisfactory."

(b) Significant Change of Job Duties. If the employee's overall performance is "unsatisfactory" prior to changing job duties, the evaluator shall immediately review the new performance improvement plan with the employee. Upon the completion of a minimum of forty-five (45) days of direct supervision,

the evaluator shall reevaluate the employee's performance on the Performance Evaluation Form.

(c) Change of Evaluator. If the employee's overall performance is "unsatisfactory" prior to a change in evaluators, the new evaluator shall immediately review the performance improvement plan with the employee. Upon the completion of a minimum of forty-five (45) days of direct supervision, the new supervisor shall reevaluate the employee's performance on the Performance Evaluation Form.

### Section 13. **Time Periods.**

(a) In computing any period of time prescribed or allowed by this chapter, the day of the act, event or default from which the designated period of time begins shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is seven (7) days or less, intermediate Saturdays, Sundays or legal holidays shall be excluded from the computation.

(b) Any time period prescribed by this chapter may be waived by mutual written agreement between the parties involved, provided such written agreement specifies the step in the procedure being extended and for what length of time, and provided that the agreement is signed by both parties within the prescribed time period being waived. A copy of this agreement shall be forwarded to the State Human Resources Administrator.

(c) When these rules or a notice given there under is required or allowed to be done at or within a specified time, the Human Resources Administrator may, upon written application, for good cause extend or enlarge the time period.

### Section 14. **Compliance with Procedure.**

If an employee does not properly comply with the procedural steps required by this chapter, the employee shall have forfeited rights granted by these provisions for the appeal. If the agency does not properly comply with the procedural steps, the employee may proceed to the next step in the appeal procedure within five (5) days of the agency's noncompliance.

### Section 15. **Performance Evaluation Appeal.**

(a) Notice of Performance Rating. The performance evaluator shall provide an employee receiving an overall rating of "unsatisfactory" with a copy of the employee's Performance Evaluation. Receipt of this copy shall constitute notice to the employee of the employee's performance management rating.

(b) Request for Reevaluation. An employee receiving an overall rating of

"unsatisfactory" shall have ten (10) days from receipt of the performance evaluation rating to submit a written "request for reevaluation" to the employee's performance evaluator. The "request" shall contain a brief and specific statement of the employee's contentions as to why the rating is inaccurate. The request shall be limited to the areas of "unsatisfactory" identified in the Performance Evaluation.

(c) Response to Request for Reevaluation. Within ten (10) days of receipt of the employee's "request for reevaluation," the performance evaluator shall conduct a reevaluation of the employee's performance. The reevaluation shall be written and shall include a brief and specific statement from the performance evaluator responding to the specific contentions of the employee.

(i) Failure to Respond to the Request for Reevaluation. The employee shall proceed to the request for review by the agency head if the evaluator failed to respond to the request for reevaluation.

(d) Request for Review. Upon receipt of the performance evaluator's reevaluation and if the employee's overall performance evaluation rating remains as "unsatisfactory" or the lack of the evaluator's reevaluation, the employee shall have ten (10) days to submit a written request for review to the agency head. The employee shall include in the request for review a brief and specific statement of the employee's contentions. The request for review shall be directed specifically to the performance evaluator's reevaluation. The request for review shall include specific facts which establish that:

(i) the evaluator violated procedural requirements established for or under performance management and/or

(ii) the overall "unsatisfactory" rating lacks supporting documentation and/or

(iii) the evaluator disregarded factors and circumstances which substantially support a higher rating and thereby deprived the employee of a performance rating based on a rational basis.

(e) Response to Request for Review. If the employee has filed a timely request for review, the agency head shall respond to the request within ten (10) days of receipt of the request. If the agency head delegates this responsibility, a letter indicating the recipient of the delegation shall be submitted to the Human Resources Division. Before making a determination the agency head or designee shall review the evaluation, the reevaluation and all documentation submitted by the performance evaluator and the employee. The agency head or designee shall make a determination as to whether the performance evaluator:

(i) violated procedural requirements established for or under

performance management and/or

(ii) the overall "unsatisfactory" rating lacks supporting documentation and/or

(iii) the evaluator disregarded factors or circumstances which substantially support the employee's position and thereby deprived the employee of a performance evaluation rating based on a rational basis. The written response shall include the agency head's or designee's determination and any action to be taken by the agency head.

(f) If the agency head determines any of the above violations have occurred, the agency head shall take action to address and, to the extent possible, correct the violation. The action taken may include, but is not limited to, amending the performance evaluation rating.

(g) Appeal to State Human Resources Administrator. Within ten (10) days of receipt of the agency head's response to the employee's request for reevaluation, the employee may appeal the agency head's response to the State Human Resources Administrator. The State Human Resources Administrator shall have thirty (30) days after receipt of all written documents and necessary information to make a determination on the employee's appeal. The Human Resources Administrator shall review the evaluation, the reevaluation and all documentation submitted by the performance evaluator, the employee and the agency head. If the Human Resources Administrator determines that the agency head's response was contrary to the purpose and intent of performance management or was contrary to the procedural requirements of performance management, the Human Resources Administrator shall require the agency head to correct the reevaluation or to conduct another evaluation, or to take whatever action the Human Resources Administrator deems appropriate. Should the State Human Resources Administrator determine that there is a conflict of interest, a designee shall be appointed by the Governor to review the appeal.