

## CHAPTER 14

### PERFORMANCE ~~APPRAISAL~~ MANAGEMENT

#### EMERGENCY RULES ARE NO LONGER IN EFFECT 120 DAYS AFTER FILING WITH THE SECRETARY OF STATE

##### Section 1. ~~Performance Appraisal System.~~ Management.

~~The p~~Performance management ~~appraisal system is~~ shall be administered by the Human Resources Division.

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

~~(a) All employees, including~~ probationary and permanent, ~~employees~~ must shall be appraised evaluated. ~~with the exception of the following:~~ Positions exempt from this coverage include:

- ~~(i) Elected State Officials and their Deputies~~
- ~~(ii) Directors, Deputies, At-Will Agency Heads, and Division Administrators who statutorily serve as at-will employees~~
- ~~(iii) Provisional and e~~Contractual ~~e~~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.**

~~Each a~~Agency heads ~~is shall be~~ responsible for ~~ensuring that utilization of the performance appraisal system~~ management within their agencies in accordance with the established personnel rules and policies. ~~complies with these provisions and appraisal objectives, and that deadlines and internal equity are met.~~ Agency heads shall ensure that each employee is ~~appraised~~ evaluated on job-related performance criteria.

##### Section 4. ~~Appraisal Dates~~ Performance Management Focal Date.

(a) All covered employees ~~hired on or before July 31, 1989,~~ shall have an ~~appraisal date of July 1.~~ 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 covered employees hired after July 31, 1989, shall have the following appraisal dates:~~ 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.

~~(i) Probationary Employees. The date the employee received a probationary appointment.~~

~~(ii) Permanent Employees. The first day of the month the employee was given a permanent appointment.~~

~~(c) Employees appointed to two (2) positions. The appraisal date of each position is the first day of the month that the employee was given a permanent appointment. their performance appraisal date change. The Performance Appraisal Report shall be sent immediately to the Human Resources Division.~~ 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.

~~(d) Reduction in force employee. A permanent employee separated due to a reduction in force who has been reinstated within (24) months shall have the same appraisal date as prior to the reduction in force.~~

~~(e) Employee on leave of absence. Probationary employees taking a leave of absence without pay shall have their appraisal date extended by the number of days they are absent. Permanent employees shall have their appraisal date extended for each calendar month they were absent. The following exceptions apply to permanent employees covered by the performance appraisal system:~~

~~(i) Workers' compensation. The appraisal date of an employee on leave of absence without pay due to a workers' compensation injury shall not be extended.~~

~~(ii) Family and Medical Leave. The appraisal date of an employee on leave of absence without pay due to Family and Medical Leave shall not be extended.~~

## Section 5. ~~Frequency of Appraisals.~~ Probation and At-Will Status

~~(a) 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.**

~~Probationary Employees.—Employees shall be appraised twice during their probationary period. The first appraisal shall be completed within thirty (30) days before the beginning of the sixth month. The second appraisal shall be completed within thirty (30) days before the employee's appraisal date. Conducting performance appraisals on probationary employees will in no way alter or change their at-will status during their probationary period. Upon completion of the probationary period the employee shall receive a permanent appointment. This appointment shall be documented on the Performance Appraisal Report.~~

~~(b) Permanent Employees.—Permanent employees shall be appraised at least annually within ninety (90) days before their appraisal date.~~

~~(c) All employees shall receive an appraisal prior to a change in evaluators or moving to a position in another agency if their performance appraisal date is within ninety (90) days of the change. The Performance Appraisal Report shall be sent immediately to the Human Resources Division.~~

~~(d) Whenever concerns over an employee's performance arise, additional appraisals along with a work improvement plan may be conducted at any time during the performance appraisal period at the discretion of the evaluator or the agency head.~~

## Section 6. **Evaluators.**

(a) Primary ~~e~~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 ~~received~~ completed training on ~~the performance appraisal management system~~ 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 All~~ evaluators shall jointly ~~cooperate in~~ completing one (1) annual Performance ~~Appraisal Report~~ Evaluation for ~~the~~ each employee.

#### Section 7. ~~Performance Standards~~ Evaluation Form.

The employee shall be ~~appraised~~ evaluated on a Performance ~~Appraisal Evaluation Report Form~~ developed approved by the Human Resources Division.

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

At the beginning of the performance ~~appraisal~~ evaluation period, the evaluator shall clarify to the employee the ~~performance standards, priorities, expectations and establish specific~~ goals, ~~special~~ projects, and work activities and competencies for the ~~appraisal~~ evaluation period. ~~Employee participation shall be encouraged in establishing the performance plan.~~ Any significant changes ~~in the performance plan~~ that occurs during an evaluation period shall be documented and discussed with the employee. ~~The employee and evaluator shall initial the Performance Appraisal Report.~~

#### Section 9. ~~Mid-Term Performance~~ Workplace Review ~~Coaching~~.

The evaluator shall provide the employee with continuous ~~performance~~ workplace ~~feedback~~ coaching throughout the performance evaluation period. The evaluator shall conduct and document at least one ~~(1) mid-term performance~~ workplace ~~review~~ coaching session with the employee during the evaluation period. ~~The mid-term performance review shall be documented and kept on file by the evaluator. The evaluator and employee shall initial the Performance Appraisal Report.~~

#### Section 10. ~~Appraisal Interview~~ Performance Evaluation.

The evaluator shall conduct and discuss ~~the final ratings with and conduct~~ the performance evaluation with the employee. The ~~appraisal~~ evaluation shall be documented on a the Performance ~~Appraisal Report~~ Evaluation Form. The employee shall be given the opportunity to ~~attach written~~ comments and document the outcome of ~~regarding~~ the ~~appraisal~~ performance evaluation. ~~A-~~

~~written summary justifying the employee's overall performance rating shall be attached to the Performance Appraisal Report.~~

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

If the employee's overall performance is rated as "~~needs improvement,unsatisfactory~~", the evaluator shall discuss and document ~~with the employee~~ the ~~areas needing~~ performance deficiencies requiring improvement and immediately provide the employee with a written ~~work performance~~ improvement plan not to exceed forty-five (45) days. ~~The written work improvement plan shall be on the Work Improvement Plan form developed by the Human Resources Division.~~ At the conclusion of the ~~work~~ forty-five (45) day performance improvement plan; and if the employee is rated as "unsatisfactory", the employee shall be ~~reappraised~~ reevaluated on the Performance ~~Appraisal-Evaluation Report Form.~~ A written work improvement plan shall be developed every ninety (90) until the employee's overall performance rating "meets expectations" or other action is taken. A copy of the work improvement plan shall be forwarded along with the reappraisal to the Human Resources Division. 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 the 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 appraisal of "Needs Improvement Unsatisfactory:" Rating.**

(a) The evaluator shall ~~reappraise~~ evaluate the employee after a written ~~work Performance i~~ mprovement plan has been ~~prepared~~ implemented and not more than ~~ninety (90)~~ forty-five (45) days after the overall work performance has been determined as "~~needs improvement~~ unsatisfactory."

(b) Significant eChange of ~~evaluator or position~~ Job Duties. If the employee's overall performance is "~~needs improvement~~ unsatisfactory" prior to changing ~~positions or evaluators~~ job duties, the new evaluator shall immediately ~~establish~~ review a the new ~~p~~ Performance i mprovement plan ~~for~~ with the employee. ~~After the new evaluator has had a~~ Upon the completion of a minimum of ~~ninety (90)~~ forty-five (45) days of direct supervision, the ~~new~~ evaluator shall re-

evaluate the employee's performance on ~~a~~ the Performance Appraisal Evaluation Report 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 ~~p~~Performance ~~i~~Improvement ~~p~~Plan with the employee. Upon the completion of a minimum of ~~ninety (90)~~ forty-five (45) days of direct supervision, the new supervisor shall reevaluate the employee's performance on the Performance Evaluation Form.

### ~~Section 13. Copies of Records.~~

~~The original Performance Appraisal Report shall be submitted in a timely manner to the Human Resources Division. A copy shall be placed in the employee's agency personnel file. The evaluator shall give the employee a copy of the Performance Appraisal Report.~~

### Section ~~14~~ 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 ~~15~~ 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 ~~16~~15. **Performance ~~Appraisal~~ Evaluation Appeal.**

(a) Notice of ~~P~~performance appraisal ~~R~~rating. The performance evaluator shall provide an employee receiving an overall rating of "~~needs improvement~~ unsatisfactory" with a copy of the employee's Performance ~~Appraisal~~ Evaluation ~~Report~~ Form. Receipt of this copy shall constitute notice to the employee of the employee's performance ~~appraisal~~ management rating.

(b) Request for ~~R~~reappraisal evaluation. An employee receiving an overall rating of "~~needs improvement~~ unsatisfactory" shall have ~~twenty (20)~~ ten (10) days from receipt of the performance ~~appraisal~~ evaluation rating to submit a written "request for ~~reappraisal~~ evaluation" to the employee's performance evaluator. The "request" shall contain a brief, ~~concise~~, and specific statement of the employee's contentions as to why the rating is inaccurate. The request shall be limited to the areas of "~~needs improvement~~ unsatisfactory" identified in the Performance ~~Appraisal~~ Evaluation ~~Report~~.

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

(i) Failure to ~~r~~Respond to the ~~r~~Request for ~~r~~Reappraisal evaluation. The employee shall proceed to the request for review by the agency head if the evaluator failed to respond to the request for ~~reappraisal~~ evaluation.

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

~~(1)~~ (i) the evaluator violated procedural requirements established for or under ~~the~~ performance ~~appraisal~~ management ~~system~~; and/or

~~(2)~~ (ii) the overall "~~needs improvement~~ unsatisfactory" rating lacks supporting documentation; and/or

~~(3)~~ (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 ~~r~~Request for ~~r~~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 appraisal evaluation, the reappraisal, evaluation ~~or the lack of the evaluator's reappraisal,~~ and all documentation submitted by the performance evaluator and the employee. The agency head or designee shall ~~then~~ make a determination as to whether the performance evaluator:

(~~1~~) violated procedural requirements established for or under ~~the~~ performance appraisal system management and/or

(~~2~~) the overall "needs improvement unsatisfactory" rating lacks supporting documentation; and/or

(~~3~~) 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 reappraisal evaluation rating. ~~The agency head shall respond in writing to the employee of how the violation will be corrected and provide them with a revised Performance Appraisal Evaluation Report signed by the agency head or designee. A copy of the written response and the revised Performance Appraisal Report shall be forwarded to the Human Resources Division.~~

(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 ~~review~~ reevaluation, the employee may appeal the agency head's response to the State Human Resources Administrator. The State Human Resources Administrator shall have ~~forty-five (45)~~ 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 appraisal evaluation, the reappraisal, evaluation 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 ~~the~~ performance appraisal management system, or was contrary to the procedural requirements of ~~the appraisal system~~

performance management, the Human Resources Administrator shall require the agency head to correct the ~~reappraisal~~evaluation, or to conduct another ~~reappraisal~~appraisalevaluation, or to take whatever action the Human Resources Administrator deems appropriate. ~~to correct the violation.~~ 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.