

Contact: Tim Cook

**ADOPTION OF AMENDMENTS TO
IOWA ADMINISTRATIVE CODE – CHAPTER 3**

Actions Requested: Adopt the amendments to Iowa Administrative Code chapter 681-3, as more fully described in the docket memo.

Executive Summary: At the May 1, 2017 meeting, the Board of Regents approved filing Notice of Intent to Amend Iowa Administrative Code Chapter 681-3. The Board authorized the Executive Director to file the rules as adopted and filed emergency after notice and public comment, to be effective July 1, 2017.

The notice was published in the May 24, 2017 issue of the Iowa Administrative Bulletin. The period for public comment closed on June 13, 2017. The Board received one public comment, which is included as Attachment A.

Adoption of the following amendments to the Board of Regents rules governing merit system personnel administration is requested. In consideration of recent amendments to Iowa Code Chapter 20, the Public Employment Relations Act, it is necessary that these revisions be effective July 1, 2017.

Amend 681 – Chapter 3, Personnel Administration, as follows¹:

3.39(3) *Pay on promotion.* An employee who is promoted will be moved to the minimum rate of the new grade, or to a higher rate on the new grade which provides an adjustment that is the salary equivalent of no less than one step higher but, at the discretion of the institution, not to exceed 5 percent without approval of the merit system than the employee's present base pay. In no event will the adjustment result in pay above the maximum of the new grade.

If the promotion involves movement to a new grade that is three or more grades higher than the employee's present grade, the resident director may approve, on written request from the employing department, an increase that is equivalent to the value of no less than two steps higher but, at the discretion of the institution, not to exceed 10 percent, without the approval of the merit system director, than the employee's present base pay.

¹ Additions have been under-lined and deletions have been stricken through.

For the purpose of calculating the promotional increase, any extra pay such as shift differential pay, pay for special assignment, on-call pay, pay for overtime, or pay for call back shall be excluded as part of the employee's present base pay. The merit review date will be computed from the effective date of promotion and in accordance with 3.39(2). Pay on promotion in accordance with the provisions of subrule 3.39(1), paragraph "b," may be authorized by a resident director and will be reported to the merit system director.

3.39(12) Pay for lead worker status. On request of an employing department and with approval of the resident director, an employee who is assigned and performs limited supervisory duties (such as distributing work assignments, maintaining a balanced workload within a group, and keeping attendance and work records) in addition to regular duties, may be designated as lead worker in the classification assigned, and paid during the period of such designation the employee's base salary plus the equivalent of no less than one step but, at the discretion of the institution, not to exceed 5 percent without the approval of the merit system director.

681—3.129(8A) Grievances. Disputes or complaints by permanent employees regarding the interpretation or application of institutional rules governing terms of employment or working conditions (other than general wage levels) or the provisions of these merit system rules (other than disputes whose resolution is provided for in 681—3.127(8A) and 681—3.128(8A)) will be resolved in accordance with the following procedure, except at institutions where a varied procedure has been approved by the merit system director in accordance with 3.129(1). Employees in an initial probationary period will be allowed access to the grievance procedure with the right to appeal in writing at steps within the institution. The institutional representative may permit an oral presentation at any step if the institutional representative deems one necessary. At each step of the grievance procedure, the employee may be represented by one

or two ~~persons~~ co-workers of the employee's choosing. The name of such representatives will be noted on the written grievance and on each subsequent appeal. Presentations, reviews, investigations, and hearings held under this procedure may be conducted during working hours, and employees who participate in such meetings will not suffer loss of pay as a result thereof.

If an employee does not appeal a decision rendered at any step of this procedure within the time prescribed by these rules, the decision will become final. If an institutional representative does not reply to an employee's grievance or appeal within the prescribed time, the employee may proceed to the next step. With the consent of both parties, any of the time limits prescribed in these rules may be extended.

Step 1. Dissatisfied employees will first discuss their problem with their immediate supervisor. It is presumed that the majority of disputes, complaints, or misunderstandings will be resolved at this point. If the employee is still dissatisfied after such discussion, the employee may within ten days after the occurrence of the matter leading to the grievance or within ten days after such time that the employee has, or could reasonably be expected to have, knowledge of such occurrence, file a written grievance with the employee's ~~immediate supervisor~~ department head or designee. A written grievance will contain a brief description of the complaint or dispute and the pertinent circumstances and dates of occurrence. It will specify the institutional or merit system rule which has allegedly been violated and will state the corrective action desired by the employee. The grievance will be signed and dated by the employee. ~~The supervisor will review the grievance with the employee and will transmit the supervisor's decision to the employee in writing within five days after receiving the grievance.~~ The department head or designee will investigate the grievance and will give the employee or a co-worker of the employee's choosing the right to present the employee's case orally. The department head or designee will notify the

employee of the decision in writing within ten days after receiving the grievance.

~~Step 2. If the employee is not satisfied with the decision of the supervisor, the employee may within five days after receiving that decision appeal it to the department head. Such an appeal will be in writing and will contain all of the information included in the initial grievance, the decision of the supervisor, and any other pertinent information the employee may wish to submit. The appeal will be signed and dated by the employee. The department head will investigate the grievance and will give the employee or a representative of the employee's choosing the right to present the employee's case orally. The department head may affirm, reverse, or modify the supervisor's decision and will notify the employee of the decision in writing within ten days after receiving the appeal.~~

Step 3. If the employee is not satisfied with the decision of the department head or designee, the employee may within five days after receiving that decision, appeal it to the dean of the college or the head of the major operating division or their designee(s) in which employed. The dean or the division head and the resident director or designee(s) will jointly represent the institution at this step of the appeal procedure. The appeal will be in writing and will include all of the information included in the initial grievance and subsequent appeals, all the decisions related thereto, and any other pertinent information the employee may wish to submit. The appeal will be signed and dated by the employee.

The dean of the college or head of the division and the resident director or designee(s) will investigate the grievance and will give the employee or a ~~representative~~ co-worker of the employee's choosing the right to present the employee's case orally. The institutional representatives may affirm, reverse, or modify the decision of the department head, and will notify the employee of their decision in writing within ten days after receiving the appeal.

Step 43. If the employee is not satisfied with the decision rendered at Step 32 of the grievance procedure, the employee may within five days after receiving that decision appeal it to the chief administrator of the institution. The appeal will be in writing and will include all of the information included in the initial grievance and subsequent appeals, all decisions related thereto, and any other pertinent information the employee may wish to submit. The appeal will be signed and dated by the employee.

The chief administrator or the chief administrator's designee will investigate the grievance and will give the employee the right to present the employee's case orally. The chief administrator may affirm, reverse, or modify the decision rendered at Step 32 and will notify the employee of the administrator's decision in writing within ten days after receiving the appeal.

Step 54. Employees not satisfied with the decision rendered under Step 43 may within five days after receiving that decision request a hearing before an arbitrator. Such a request will be in writing, will include all of the information included in the initial grievance and subsequent appeals, all of the decisions related thereto, and any other pertinent information the employee may wish to submit.

The appeal will be signed and dated by the employee and will be directed to the merit system director who will arrange for a hearing before an arbitrator as prescribed under 3.129(2). The arbitrator will be expected to render a decision within 30 calendar days following the conclusion of the hearing.

The merit system director shall have the right to rule whether a case is grievable and arbitrable under the merit system. The merit system director shall have the right to refuse to refer to arbitration any grievance not found to be in full compliance with these rules involving the

grievance procedure. The board of regents shall retain jurisdiction to review decisions of the merit director as to whether a matter is grievable or arbitrable upon appeal by an employee.

3.129(2) Appeals. The board of regents will approve the use of a single arbitrator in hearing an appeal. The selection of the arbitrator shall be made from a panel of arbitrators as referred from the Federal Mediation and Conciliation Service or the Iowa Public Employment Relations Board with a preference for those Iowans so certified.

The arbitrator will hear a dispute appealed to the last step of the grievance procedure and render a decision thereon subject only to review by the courts.

The arbitrator will establish procedures for the conduct of the hearing in a fair and informal manner that will afford each party reasonable and ample opportunity for case presentation and to rebut the presentation of the other. The arbitrator will be expected to render a decision to the involved parties and to the board of regents within the prescribed time.

AFSCME Council 61 Comments on ARC 3071C

Board of Regents Rules 5/24/17

Item 2:

- **681-3.129(8A) Grievances:**
 - Employees must use coworkers to be with them at grievance meetings, not the more general “persons.”
 - We are against this change because it infringes on worker’s rights to fair representation from their union by limiting an employee’s representative to just a co-worker (Chapter 20.8 & Weingarten Rights).
 - Chapter 20.8 states: Public sector employees have the right to engage in concerted activities for the purpose of mutual aid or protection.
 - Weingarten Rights won in Iowa in *City of Marion vs Weitenhagen*: A public employee’s insistence on union representation at an employer’s investigatory interview that could result in disciplinary action is protected and concerted activity.
 - By limiting who the representation is in a grievance meeting, the state is going against these rights employees have to fair representation.
 - Step 2 of the grievance procedure is eliminated.
 - We are against the elimination of Step 2 in the grievance process because we believed it allowed for problems to be solved at the lowest level with the least amount of hassle. This change will end up escalating workplace issues, and we ask for it be reinstated.