

[TABLE OF CONTENTS](#)[ARTICLE I General Provisions](#)[ARTICLE II Employment Information](#)[ARTICLE III Standards of Conduct](#)[ARTICLE IV Discipline and Grievance](#)[ARTICLE V Termination of Employment](#)[ARTICLE VI Leave Time Benefits](#)[ARTICLE VII Wage and Hours](#)[ARTICLE VIII Health and Safety](#)[ARTICLE IX Education and Training](#)[ARTICLE X Pay Practices](#)[ARTICLE XI Performance Evaluations](#)[ARTICLE XII Payroll](#)[ARTICLE XIII FTA Drug, Alcohol Misuse](#)[ARTICLE XIV FMSCA Drug, Alcohol Misuse](#)[ARTICLE XV HIPAA Policies and Procedures](#)[APPENDIX](#)

## ARTICLE IV

### Discipline and Grievance

#### Sec. 3-4-10. Disciplinary actions.

A. Disciplinary actions are to be corrective in nature and are intended to provide reasonable means for correcting performance. Disciplinary actions may include, but are not limited to warnings, reprimands, suspension without pay, special review period, demotion and dismissal.

B. For any disciplinary action, short of dismissal, which may result in a loss of pay or benefits, an employee is entitled to a hearing with the department head, elected official, supervisor or other designee who may impose the disciplinary action, at which no other person or representative shall be present. The employee will be informed of the incident that led to the hearing and will be afforded the opportunity to respond to the charges. After hearing and reviewing the employee's response, the department head, elected official, supervisor or other designee will then administer the appropriate discipline. Documentation of the hearing and of the disciplinary action will be forwarded to the Human Resources Office.

C. The County reserves the right to bypass lesser disciplinary action and immediately dismiss an employee, if, in the sole opinion of the County, the employee's conduct, either by itself or considering the employee's prior performance, warrants dismissal or other discipline. Employees holding positions of higher levels of responsibility may be held to higher standards of performance and thus have more severe disciplinary actions imposed on them than those who hold positions of lower responsibility.

D. Department heads, elected officials or their appointees may impose disciplinary actions. However, department heads and elected officials are responsible for disciplinary action initiated by their appointees.

E. At the time disciplinary actions are taken against an employee, if these actions can be grieved, the department head or elected official shall make available to the employee a copy of the grievance section of this Chapter. (Weld County Code Ordinance 2003-4; Weld County Code Ordinance 2007-4)

#### Sec. 3-4-20. Dismissal procedures.

A. No dismissal shall be made unless the employee is given a pre-dismissal hearing. These procedures apply to regular employees only. The employee should receive written notification of the following: (1) the reason for the possible dismissal; and (2) the time, date and place of the scheduled pre-dismissal hearing.

B. The pre-dismissal hearing shall be scheduled the next working day after the employee receives the notification. The employee will be placed on administrative leave with pay until a determination of dismissal or retention is made.

C. Attendance at the pre-dismissal hearing is limited to the department head or elected official, the immediate supervisor, the employee being considered for dismissal, the employee's legal counsel if desired and a representative of the Department of Human Resources. If the employee is represented by legal counsel, the department head or elected official may also have legal representation.

D. The employee shall have the right to make statements to the department head or elected official which may rebut the reasons stated in the pre-dismissal notification. This rebuttal may be presented orally or in writing. The pre-dismissal hearing shall not be a full evidentiary hearing.

E. After receiving said rebuttal and any other appropriate information, the department head or elected official shall, within one (1) working day, render a determination as to whether the employee shall or shall not be dismissed or whether to extend the period of paid administrative leave in order to provide enough time to investigate the incident so as to render an informed decision. If the department head or elected official decides to dismiss the employee, notification will be provided to the employee under separate letter. The notification of dismissal shall include the reasons which the department head or elected official determines to justify dismissal.

F. If the department head or elected official determines that the employee shall be retained, the department head or elected official may elect to impose upon the employee any disciplinary measures short of dismissal. (Weld County Code Ordinance 2003-4; Weld County Code Ordinance 2007-4)

#### **Sec. 3-4-30. Grieving a dismissal.**

If the employee is dismissed pursuant to these procedures, the employee may exercise the right to grieve such dismissal without the necessity of complying with Steps 1, 2, 3 and 4 of the grievance procedure in Section 3-4-60. (Weld County Code Ordinance 2003-4)

#### **Sec. 3-4-40. Employee grievance.**

An employee who feels that the policies set forth in this Chapter are not being properly applied, or has any disciplinary action taken against him or her that results in an immediate loss of pay, may file a grievance. These actions include termination, demotion and/or suspension resulting in loss in pay. (Weld County Code Ordinance 2003-4)

#### **Sec. 3-4-50. Nongrievance items.**

A. Employees cannot grieve a County policy that has been adopted by the Board of County Commissioners, even if they feel it is an unjust policy. The County's policies are addressed and adopted in public meetings in the form of a County resolution or ordinance. All employees are encouraged to attend public meetings, on their own time, that involve them as taxpayers and employees, in order to voice their opinions.

B. Employees cannot grieve performance evaluations or written counseling forms. They can appeal these to their elected official or department head. (Weld County Code Ordinance 2003-4)

### **Sec. 3-4-60. Grievance procedure.**

The employee grievance procedure is as follows:

A. Step 1. Appeal to immediate supervisor. All grievances must first be presented to the employee's immediate supervisor within five (5) calendar days of the incident which is the subject matter of the grievance.

B. Step 2. Immediate supervisor response to appeal. The immediate supervisor will give the employee an answer within five (5) calendar days of the presentation of the grievance.

C. Step 3. Appeal to the department head or elected official.

1. If the employee is not satisfied with the supervisor's answer to the grievance, the employee may, within five (5) calendar days of receiving the supervisor's answer, appeal the supervisor's answer to the department head or elected official. Such an appeal must be presented in writing. The writing shall state the nature of the grievance and explain the employee's position.

2. Timeliness of appeal. In all cases, failure to submit a written appeal to the department head or elected official within twenty (20) calendar days of the incident which is the subject matter of the grievance shall constitute a stale grievance and waiver of grievance rights for the incident.

3. Appeals directly to the department head or elected official. In those instances when the discipline is being administered directly by the department head or elected official, the employee grievance procedure begins at Step 5.

D. Step 4. Department head or elected official response to the appeal. The department head or elected official shall give a written answer to the grieving employee within five (5) calendar days of the presentation of the grievance.

E. Step 5. Filing a formal written grievance. If the employee disagrees with the department head or elected official's answer, or if grieving a dismissal from employment, the employee may file a formal written grievance with the Department of Human Resources within ten (10) calendar days of receiving the department head's or elected official's written response or dismissal from employment. The written grievance must clearly state the employee's side of the case and must include the following: specifically what decisions or actions the employee is grieving; what remedy the employee is seeking in the grievance; the specific facts as they are known to the employee; any documentation to substantiate the facts; and a summary of the answer of the supervisor and department head or elected official.

F. Step 6. Reconciliation. The Director of Human Resources may attempt to reconcile the differences. If the Director of Human Resources is administering the discipline, the Director of Finance and Administration will attempt reconciliation. If reconciliation is undertaken and it is not successful, a grievance hearing will be scheduled.

G. Step 7. Scheduling the grievance hearing. The Director of Human Resources has fifteen (15) calendar days from receipt of the written grievance to set a grievance hearing date and to notify the employee and department head or elected official of the hearing date. (Weld County Code Ordinance 2003-4; Weld County Code Ordinance 2005-14; Weld County Code Ordinance 2007-4)

### **Sec. 3-4-70. Grievance hearing.**

#### **A. Presence at hearing.**

1. Presence of employee involved. Under no circumstances shall a hearing be conducted without the personal presence of the employee who requested the hearing. However, an employee who fails to appear at such hearing without good cause, as determined by the Grievance Board, shall be deemed to have waived his or her rights to a hearing.

2. Persons in attendance. The grievance hearing is not a public hearing. The Grievance Board, the grieving party plus one (1) representative, the responding department head, elected official or other designated supervisor plus one (1) representative, a representative of the Department of Human Resources, the recorder and any witnesses, while giving testimony, are the only persons allowed to be present at grievance hearings. The grieving employee shall be entitled to be accompanied and represented at the hearing by an attorney or, if not an attorney, any other person of his or her choice.

3. The attorney who represents the grieving employee shall be paid by the employee. In no event shall the County be obligated to pay the employee's attorney fees or any costs associated with the grievance. The responding department head, elected official or other supervisor shall also be entitled to have an attorney representing him or her at the hearing.

**B. Composition of Grievance Board.** The Grievance Board shall consist of three (3) members as listed below. If either party fails to select a member to serve on the Grievance Board by the date designated by the Director of Human Resources, then the Director of Human Resources shall appoint a member.

1. One (1) County employee chosen by the grieving employee, but not from the employee's own office or department. Said County employee's employment status must include eligibility to participate in grievance procedures; however, said employee may not be called by either party as a witness.

2. One (1) County employee chosen by the department head or elected official that imposed the disciplinary action, but not from the same office or department as the department head or elected official. Said County employee's employment status must include eligibility to participate in grievance procedures; however, said employee may not be called by either party as a witness.

3. One (1) person with labor relations and/or legal background selected from a list certified by the Board of County Commissioners. This person shall serve as the Chairperson of the Grievance Board.

**C. Postponements and extensions.** Postponements of hearings and extensions of time of hearings may be requested by either party or his or her designated agent. However, the granting of such postponements or extensions shall be made only upon the showing of good cause and is at the discretion of the Director of Human Resources. Postponements or extensions will not exceed two (2) weeks, unless there are extraordinary circumstances. In the event an extension is granted at the request of a disciplined employee, said employee will not be eligible for back pay for the period of the extension should back pay be awarded.

**D. Procedure and evidence.** The hearing shall be conducted informally and shall not be subject to strict judicial or technical rules of procedure. A wide latitude in the manner of presenting the respective positions should be afforded the parties. The grievance hearing pursuant to these rules shall not be a

hearing under the Administrative Procedures Act or an arbitration which may be subject to the rules of the American Arbitration Society.

1. Each party shall, prior to or during the hearing, be entitled to submit memoranda concerning any matters being considered by the Grievance Board. Such memoranda shall become a part of the hearing record.

2. The Grievance Board may exclude unduly repetitious evidence.

3. The Grievance Board shall conduct a de novo hearing of the grievance.

4. Both parties may call witnesses to testify on their behalf and present evidence which is relevant. The grieving party's main personnel file shall automatically become a part of the hearing record.

5. In the event an employee is represented by an attorney, notice of such representation must be submitted to the Human Resources Office at least five (5) calendar days prior to the hearing so that the County Attorney may be prepared to represent the department head or elected official. If the employee cannot afford an attorney, the Grievance Board may, at its discretion, allow a person who is not an attorney to represent the employee.

6. Any attorney who represents a grieving employee shall be paid by the employee. In no event shall the County be obligated to pay the grieving employee's attorney fees or any costs incurred by the employee in the course of the grievance hearing process.

7. Any County employee who is requested by either party to testify at the hearing must comply with the request. Failure to appear and testify upon request will subject the employee to disciplinary action.

8. The Grievance Board members shall not conduct their own pre-hearing investigations or talk with the department head, elected official or any other persons connected with the case about the facts of the case. Discussions, if any, prior to the hearing shall be limited to discussions with the Director of Human Resources as to procedural matters and the method of conducting the hearing.

E. Burden of proof. The grieving employee will have the burden of going forward to establish a prima facie case regarding his or her grievance. *Prima facie* means sufficient evidence to prevail until overcome by other evidence. The department head or elected official shall then have the burden of persuading the Grievance Board of his or her position by a preponderance of evidence. *Preponderance of the evidence* is defined as that evidence which is most convincing and satisfying in the controversy between the parties, regardless of which party may have produced such evidence. Colorado Civil Jury Instructions 2d, Section 3:1(4).

F. Record of hearing. A record of the hearing shall be kept by an electronic recording unit. Either party may request the use of a court reporter instead of or in addition to the electronic recording unit. The requesting party shall pay for all costs associated with using the court reporter.

G. Decision of the Grievance Board.

1. The Grievance Board shall either grant or deny all or any portion of the employee's grievance. The Grievance Board will not formulate any policies or procedures, but may interpret policies and procedures set forth in this Chapter. The Grievance Board shall not fashion any binding remedy,

but may suggest remedies to department heads or elected officials. A majority vote of the Grievance Board shall represent the official decision of the Grievance Board.

2. Upon completion of the grievance process and within ten (10) calendar days of the hearing's conclusion, a written report of the findings of fact and a decision of the Grievance Board will be prepared. A copy will be distributed to the grieving employee, the grieving employee's supervisor and department head or elected official and the Department of Human Resources.

3. The Grievance Board's decision is final, unless timely appeal is made to the Board of County Commissioners as indicated below.

H. Appeal. Any party who seeks to modify the decision of the Grievance Board may appeal the matter to the Board of County Commissioners. To do so, the party must file a written notice of appeal with the Director of Human Resources within ten (10) calendar days of receiving the Grievance Board's decision. The notice of appeal must specifically state what part of the decision the party seeks to have modified and the reasons therefor. The notice shall not exceed five (5) pages in length. The party opposing the modification may submit a memorandum brief, but must do so within five (5) calendar days of receiving the notice of appeal. Any such memorandum brief shall not exceed five (5) pages in length.

I. Review of appeal.

1. The Director of Human Resources shall transmit the Grievance Board's decision, the notice of appeal and any memorandum brief to the Board of County Commissioners for review.

2. The Board of County Commissioners may affirm the Grievance Board's decision, modify it in whole or in part or remand the matter to the Grievance Board for further fact-finding. A modification may only be made if, based upon the Grievance Board's findings of fact, the decision is clearly wrong or is in excess of the Grievance Board's jurisdiction, authority, purposes or limitations as defined by this Chapter and the procedures outlined in Chapter 2 of this Code. The Board of County Commissioners may review the entire hearing record upon a majority vote of the Board of County Commissioners. The Board of County Commissioners shall transmit a written decision on the appeal to the Director of Human Resources within ten (10) working days of the receipt of the appeal. The Director of Human Resources shall thereafter communicate the decision to the employee within five (5) working days.

3. Regardless of the above-stated grievance procedures, all employees are considered to be *at-will* employees and these procedures are not intended to create, nor are they to be considered to constitute, a contract between the County and any one (1) or all of its employees. (Weld County Code Ordinance 2003-4; Weld County Code Ordinance 2005-14; Weld County Code Ordinance 2007-4; Weld County Code Ordinance 2012-8)