



ADMINISTRATIVE REGULATION (AR)

DUE PROCESS (Revised from AR-00043)

FESSAM #7C.2

Effective: 06/01/2016

I. SCOPE:

This Administrative Regulation applies to all Loveland Fire Rescue Authority ("LFRA") divisions and departments, and all Regular full-time and Regular part-time employees. This regulation does not apply to Probationary, Temporary, Seasonal, or other non-Regular employees as described in the Administrative Regulation "Pay and Employment Decisions".

II. PURPOSE:

This Administrative Regulation ensures that all LFRA divisions and departments, and all Regular full-time and Regular part-time employees, comply with and have an understanding of the hearing procedures regarding serious discipline and employment changes that adversely affect base pay. For purposes of this Administrative Regulation, "employee(s)" means a Regular full-time and Regular part-time employee(s), and does not include Probationary, Temporary, Seasonal, or other non-Regular employees as described in the Administrative Regulation "Pay and Employment Decisions".

III. DEFINITIONS:

- **Employment change** refers to transfers/reassignments, promotions, voluntary or involuntary demotions, reclassifications, market adjustments, placement in a temporary assignment, restructuring, and/or position eliminations that are not associated with a RIF.
- **RIF** refers to Reduction-in-Force.
- **Serious discipline** refers to any action *taken in conjunction with discipline* that adversely affects an employee's base pay, including terminations, suspensions without pay, demotions and involuntary reductions in base pay.
- **Business days** refers to Monday through Friday, but excludes LFRA designated holidays.
- **Base Pay** refers to the hourly wage for a position's budgeted hours, not including any additional payments such as overtime, benefits, stipends, and/or bonuses.

IV. POLICY:

Employees who have successfully completed the probationary period are considered "for cause" and are eligible for due process. When a "for cause" employee has either received serious discipline or has an imposed employment change that results in adverse impact on base pay (excluding Collateral, Specialized, and temporary assignments) he/she is afforded the procedures as outlined below.

V. PROCEDURE:

Employee Request for Hearing

A request for a hearing ("appeal") before the LFRA Fire Chief must be submitted to the Human Resources Director, in writing and signed by the employee, within five (5) business days

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of the date that the division manager or his/her designee makes the decision serious discipline is necessary or an employment change is imposed that results in adverse impact on base pay. For purposes of this policy, a decision/employment change shall be considered delivered on the date it is verbally communicated to the employee or, if not communicated verbally, on the date the written decision/employment change is mailed to the employee at his/her last known address. The request shall state what adverse personnel action has occurred, when it occurred, why the action should not have occurred (i.e. mitigating circumstances) and what remedy is being sought. Failure to fulfill these basic appeal requirements may serve as a basis for the denial of an appeal and/or a limitation on the issues that will be considered on appeal.

The Human Resources Director or his/her designee (collectively referred to herein as "Human Resources Director") shall immediately notify the employee's division manager or his/her designee and the LFRA Fire Chief of the appeal. A date, time and location for the hearing shall be set as soon as possible. Human Resources will notify all applicable parties of the date, time and location of the hearing.

The employee shall have a right to request copies of any written information that is in the employee's personnel file and other documents pertinent to the disciplinary proceeding that are not privileged and confidential as determined by the Open Records Act and/or the Colorado Criminal Justice Records Act. Documents beyond the scope of the personnel file will be subject to reproduction costs as referenced in the "Open Records" Administrative Regulation.

Procedures at the Hearing

1. *Hearing Officer.* The LFRA Fire Chief, or his/her designee, shall serve as the hearing officer for the proceedings and shall have full authority to render decisions regarding the action at issue. A hearing normally shall be set for a maximum of 3 hours, but at the discretion of the hearing officer may be longer if either party makes a written request for additional time. The hearing shall be considered quasi-judicial but is not subject to the Colorado Rules of Civil Procedure or the Rules of Evidence, except that only relevant evidence shall be allowed. The hearing officer shall have full authority to hear and resolve any issues relating to the conduct of the hearing and to establish hearing procedures consistent with this policy.
2. *Legal Counsel.* Both parties may be represented by legal counsel who may participate fully in the hearing. The employee shall notify the Human Resources Director at least five (5) business days before the hearing if he/she will be represented by legal counsel at the hearing. This may cause the hearing to be delayed while LFRA obtains legal counsel. The hearing officer also is entitled to legal counsel and may use the advice of such legal counsel in determining any legal issue related to the hearing.
3. *Hearing Participants.* The following individuals are entitled to be present during the entire hearing: the employee subject to the action and his/her attorney, agent or advisory representative; the employee's division manager or his/her designee; the employee's supervisors; any attorney or agent representing LFRA; the hearing officer and his/her attorney or agent; and Human Resources representatives. Employee advisory or supporting representatives employed by LFRA will not be paid for attendance but may

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use applicable leave accruals.

4. *Witnesses.* Either party may call witnesses to testify at the hearing. Witnesses shall not be sworn unless agreed to by both parties or ordered by the hearing officer. Both parties must submit a witness list to the opposing party and the Human Resources Director at least five (5) business days in advance of the hearing. The employee is responsible for requesting and coordinating the availability of his/her witnesses to attend the hearing. LFRA will accommodate requests for time away from work to attend the hearing for LFRA employees who are called as witnesses to testify. LFRA has no responsibility to ensure that non-LFRA employee witnesses attend the hearing. Except for the hearing participants listed above, witnesses shall be sequestered and not allowed to hear the testimony of another witness.
5. *Order of Presentations.* Both parties shall be entitled to a brief opening statement; LFRA's opening statement shall precede the employee's opening statement. After opening statements, LFRA shall present its case. LFRA may call witnesses on LFRA's behalf. The employee shall have the right to cross-examine any witnesses called by LFRA. Following the close of LFRA's case, the employee may provide testimony to the hearing officer and may call witnesses on his/her behalf. LFRA shall have the right to cross-examine any witnesses called by the employee. At the discretion of the hearing officer, either party may call rebuttal witnesses. Both parties shall be entitled to a brief closing argument; LFRA's closing argument shall precede the employee's closing argument.
6. *Record.* It shall be standard practice for the hearing to be audio recorded. Either party, at its own expense, may request that a court reporter transcribe the proceedings.
7. *Continuance.* The hearing officer may grant a continuance for good cause shown at the request of either party or upon the hearing officer's own action.

Decision

A written decision, containing the hearing officer's findings and decision, shall be sent to the employee, the employee's division manager or his/her designee and the Human Resources Director within ten (10) business days of the hearing. If the hearing officer needs additional time to consider the decision he/she shall communicate the need for an extension to the employee and Human Resources Director within five (5) business days of the hearing. The hearing officer's decision will be effective when delivered to the employee. For purposes of this policy, a decision shall be considered delivered on the date it is verbally communicated to the employee or, if not communicated verbally, on the date the written decision is mailed to the employee at his/her last known address. The decision of the hearing officer shall be final and no further appeal within LFRA shall be permitted.

If the hearing officer's decision modifies or reverses all or a portion of the serious discipline action or employment change, any lost benefits and/or wages affected by the decision will be reversed and/or reimbursed within five (5) business days of the decision.

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LFRA Fire Chief's Right to Impose Serious Discipline or an Employment Change Directly

Notwithstanding anything in this Administrative Regulation to the contrary, the LFRA Fire Chief shall at all times have the right to impose serious discipline or an employment change directly, instead of such action being taken by the employee's supervisor(s) or division manager or his/her designee, as applicable.

Before deciding whether to impose serious discipline or an employment change directly, the LFRA Fire Chief shall notify the employee and the Human Resources Director in writing of the potential serious discipline or employment change being considered and the reason such action is being considered. Within five (5) business days of receiving such notice, the employee may submit to the Human Resources Director a written request for a meeting ("hearing") with the LFRA Fire Chief, a copy of which the Human Resources Director shall promptly provide to the LFRA Fire Chief. During the meeting, the LFRA Fire Chief shall present to the employee the evidence (documents, witness testimony, etc.) the LFRA Fire Chief believes supports the serious discipline or employment change being considered. The employee may then provide such evidence (documents, witness testimony, etc.) that the employee believes supports his/her position with respect to the potential serious discipline or employment change.

To the extent practicable, the parties will follow the procedures set forth in "**Procedures at the Hearing**" set forth above.

Within ten (10) business days of the meeting, or as soon thereafter as practicable, the LFRA Chief shall deliver in writing his/her findings and decision to the employee and the Human Resources Director. In rendering his/her decision, the LFRA Fire Chief, may a) withdraw the serious discipline or employment change being considered, b) impose the serious discipline or employment change being considered; or impose such modified serious discipline or employment change as the LFRA Fire Chief determines is appropriate. The LFRA Fire Chief's decision is final and cannot be appealed to within LFRA.

Any questions regarding this policy should be directed to the Human Resources Director.

VI. OTHER RELATED REGULATIONS & PROCEDURES:

Conduct, Performance and Discipline

Effective: 1/1/2016

Pay and Employment Decisions

Effective: 1/1/2016

Reduction-In-Force

Effective: 1/1/2016

VII. LFRA FIRE CHIEF SIGNATURE:

Mark Miller, Fire Chief

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