



# State of Ohio Personnel Board of Review

## Municipal Civil Service Commissions Guidelines for Conducting Employee Hearings



February 2020

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# MUNICIPAL CIVIL SERVICE COMMISSIONS: GUIDELINES FOR CONDUCTING EMPLOYEE HEARINGS

February 2020

**These guidelines are a supplement to the statutes and administrative rules governing civil service employees. These guidelines are not a replacement for those statutes and rules and if there is any conflict between the statutes and rules and these guidelines, the statutes and rules prevail.**

## I. JURISDICTION

### A. Assumption

Statutory Civil Service System ([O.R.C. Chapter 124.](#))

### B. Statutory Authority:

“ . . . The municipal civil service commission shall prescribe, amend, and enforce rules not inconsistent with this chapter for the classification of positions in the civil service of such city and city school district, and all the positions in the city health district; for examinations for and resignations from those positions; for appointments, promotions, removals, transfers, layoffs, suspensions, reductions, and reinstatements with respect to those positions; and for standardizing those positions and maintain efficiency in them. The commission’s rules shall authorize each appointing authority of a city, city school district, or city health district to develop and administer in a manner it devises an evaluation system for the employees it appoints. The commission shall exercise all other powers and perform all other duties with respect to the civil service of such city, city school district, and city health district, as prescribed in this chapter and conferred upon the director of administrative services and the state personnel board of review with respect to the civil service of the state . . . . The procedure applicable to reductions, suspensions, and removals, as provided for in section 124.34 of the Revised Code, shall govern the civil service of cities . . . .” ([See O.R.C. 124.40](#))

### C. Personnel Functions (Department of Administrative Services)

1. Testing: [O.R.C. 124.09](#), [O.R.C. 124.23](#)
2. Classification Plan: [O.R.C. 124.14](#)
3. Appointments: [O.R.C. 124.27 to 124.30](#)
4. Layoffs and Abolishments: [O.R.C. 124.32 to 124.328](#)
5. Transfers: [O.R.C. 124.32](#), [O.R.C. 124.33](#)

6. Provisions Specific to Municipal Civil Service Commissions include [O.R.C. 124.41 - 124.50](#)

#### D. Adjudicatory Functions (State Personnel Board of Review)

1. O.R.C. 124.03(A) states, in part: “. . . Hear appeals, . . . of employees in the classified. . . service from final decisions of appointing authorities relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification . . . .” ([See O.R.C. 124.03](#))

#### E. Classified and Unclassified Service

1. Classified service includes most government employees. ([See O.R.C. 124.01\(C\)](#), [O.R.C. 124.11](#))
2. Under certain circumstances, employees can be classified even if they were appointed without formal examination pursuant to [O.R.C. 124.30](#).
3. Listed below are a number of provisions in [O.R.C. 124.11\(A\)](#) that pertain to the unclassified service. Note that positions listed as “unclassified” may still fall under a civil service commission’s potential review authority under certain circumstances. One example of this would be when a municipal employee, who experiences an adverse employment action, files an appeal with the commission and asserts that his or her position actually falls within the “classified” service, not the “unclassified” service.
  - a. O.R.C. 124.11(A)(1)
  - b. O.R.C. 124.11(A)(3)
  - c. O.R.C. 124.11(A)(5)
  - d. O.R.C. 124.11(A)(7)
  - e. O.R.C. 124.11(A)(8)
  - f. O.R.C. 124.11(A)(10)
  - g. O.R.C. 124.11(A)(11)
  - h. O.R.C. 124.11(A)(12)
  - i. O.R.C. 124.11(A)(15)
  - j. O.R.C. 124.11(A)(28)
  - k. O.R.C. 124.11(A)(29)

## II. ADJUDICATIONS

#### A. Practice and Procedure (select provisions, see rules for complete list)

1. Rules of evidence are the same as civil actions in Ohio courts of general jurisdiction, except as modified by the rules under O.A.C. 124. ([See O.A.C. 124-9-01](#))

2. Hearsay may be permitted with proper foundation. ([See O.A.C. 124-9-02](#))
3. Cumulative testimony may be limited. ([See O.A.C. 124-9-03](#))
4. Prior discipline, which consists of only written reprimands, fines, suspensions, reductions, or removals contained in an employee's personnel file, are inadmissible to prove allegations, but can be used to prove:
  - 1) Notice.
  - 2) Justification for level of discipline. ([See O.A.C. 124-9-04](#))
5. Questionnaires may be used. ([See O.A.C. 124-9-05](#))
6. Stipulations may be accepted with the consent of both parties. ([See O.A.C. 124-9-06](#))
7. Witnesses. ([See O.A.C. 124-9-07](#))
8. Conviction of a crime. ([See O.A.C. 124-9-08](#))
9. Best Evidence. ([See O.A.C. 124-9-09](#))
10. Administrative Notice. ([See O.A.C. 124-9-10](#))
11. Disparate treatment. Evidence of disparate treatment may be introduced at hearing. ([See O.A.C. 124-9-11](#))
12. Continuances. Absent good cause shown for delay, written requests must be made 10 days in advance of hearing and do not act as an automatic stay, but must be expressly granted. ([See O.A.C. 124-11-03](#)).
13. Appearances. Party-Employees may represent themselves or be represented by an attorney. ([See O.A.C. 124-11-05](#))
14. Motions must be written and supported by affidavits or other admissible evidence and shall state, with particularity, both the relief sought and the basis for such relief. ([See O.A.C. 124-11-07](#))
  - a. Procedural motions may be acted upon without a response.
  - b. Non-procedural motions shall have a response within 10 days of service.
15. Written briefs may be required. ([See O.A.C. 124-11-08](#))
16. Filing is complete when document is received. Documents received after five p.m. on a business day, or received at any time on a non-business day, shall be considered to be filed the next business day. ([See O.A.C. 124-11-09](#))

17. Service may be in person or by mail. ([See O.A.C. 124-11-10](#))
18. Extensions of time to file or respond to motions and briefs are available for good cause upon request. ([See O.A.C. 124-11-12](#))
19. Procedural orders may be issued by the adjudicating body at any time prior to issuance of final order. ([See O.A.C. 124-11-13](#))
20. Procedure in record hearings. ([See O.A.C. 124-11-14](#))
  - a. The adjudicating body shall determine the order in which a hearing shall proceed.
  - b. Either party may call the opposing party to testify as if on cross-examination.
  - c. The adjudicating body may require, limit, or eliminate opening statements and closing arguments.
21. Record of hearings. All record hearings shall be recorded. ([See O.A.C. 124-11-15](#))
22. Transcripts. Within 40 days after a party filing an appeal to a court of common pleas, upon the filing of a praecipe by the appellant, Commission must transmit a written transcript and copies of all documents considered at the commission hearing. ([See O.R.C. 2506.02](#))
23. Subpoenas may be issued in one of two ways: 1) Supplied to parties for completion and service, or 2) adjudicating body sends regular mail. ([See O.A.C. 124-11-17](#))
24. Failure to appear may result in the appeal's dismissal, or the commission may grant other relief as it deems appropriate. ([See O.A.C. 124-11-19](#))
25. Settlements and withdrawals permitted with proper authority. ([See O.A.C. 124-11-20](#))
26. Exchange of documents and witness lists. If a request for documents and witness list is made it must be supplied or may result in exclusion. ([See O.A.C. 124-13-01](#))
27. Depositions and interrogatories may be ordered upon motion of any party. ([See O.A.C. 124-13-02](#))
28. Motion to make definite and certain available; failure to respond bars evidence which is subject of motion. ([See O.A.C. 124-13-03](#))
29. Prehearing, status conferences, and mediations may be ordered at any time prior to a record hearing. ([See O.A.C. 124-13-05](#))
30. "Final order, adjudication, or decision" regarding decision in a hearing. ([See O.R.C. 2506.01](#))

## B. Disciplinary Appeals

1. Removals, suspensions, fines, reductions in pay/position.
2. Pre-disciplinary hearings are required to be conducted by an impartial individual who does not serve as the employee's supervisor. If parties do not raise issue of lack of a pre-disciplinary hearing, the adjudicating body may choose not to pursue this issue.
  - a. Pre-disciplinary hearing need not be elaborate and should not be confused with an appeal and a full evidentiary hearing before an adjudicating body.

*(Loudermill v. Cleveland Board of Education (1983) 721 F.2d 550)*

In a pre-disciplinary hearing, employee only entitled to:

- i. Prior oral or written notice of the charges against him/her before hearing (benchmark notice: 72 hours).
  - ii. An explanation of the employer's evidence.
  - iii. An opportunity to present his/her side of the story.
3. Consider requirements of "Section 124.34 Orders." ([See O.A.C. 124-3-01](#)) If appointing authority fails to meet requirements, adjudicating body may disaffirm action. "Section 124.34 Orders" are available on SPBR's webpage and Appendix B contains a "Section 124.34 Order" that may be copied and distributed to appointing authorities.
4. Notice of Appeal
  - a. Employee must file notice of appeal with commission within 10 calendar days following the date the disciplinary order is served on the employee. If no disciplinary order is served on the employee, the employee has 30 calendar days from actual notice of disciplinary action to file an appeal with civil service commission. ([See O.A.C. 124-1-03\(A\),\(I\)](#))
5. Burden of Proof
  - a. Appointing authority must prove by a preponderance of the evidence that employee committed enough O.R.C. 124.34 offense(s) to justify the discipline received. No evidence may be heard on any infraction not listed on a "Section 124.34 Order." ([See O.R.C. 124.34; O.A.C. 124-1-01](#))
  - b. Appointing authority must comply with procedural requirements of issuing disciplinary order as found in O.R.C. 124.34 and O.A.C. 124-3-01. ([See O.A.C. 124-3-01](#))

- c. Appointing authority must prove, with regard to each infraction alleged:
  - i. Appointing authority had established standard of conduct.
  - ii. Standard of conduct was communicated to employee.
  - iii. Employee violated the standard of conduct.
  - iv. To determine appropriateness of discipline, consider:
    - 1. Seriousness of infraction.
    - 2. Employee's prior work record/disciplinary history.
    - 3. Employee's tenure.
    - 4. Any disparate treatment – that similarly situated employees were not disciplined in the same manner.
- d. Employee then allowed to rebut appointing authority's evidence.
  - i. Employee may present any contrary or mitigating evidence.
  - ii. Merger and Bar: If appointing authority knew of prior incidents by employee which could have resulted in discipline, those incidents are merged into the discipline currently under appeal. Incidents occurring after the incident currently under appeal, but prior to the issuance of the disciplinary order, are not merged and may form the basis for subsequent discipline. ([See O.A.C 124-3-05](#))
  - iii. Once discipline is imposed for a particular incident, that incident shall not be used as the basis for subsequent discipline, although it can be considered for prior notice and progressive discipline.
  - iv. Laches: Employees cannot be disciplined for acts which have been known or should have been known to the appointing authority more than two years prior to the issuance of a disciplinary order. ([See O.A.C. 124-3-04](#)) Case law references a "rule of reasonableness."
- e. If appointing authority meets burden of proving by a preponderance of the evidence the allegations in a disciplinary order, and the discipline is appropriate, commission should affirm the disciplinary action. If appointing authority proves some, but not all allegations, commission may modify the disciplinary action. If appointing authority fails to prove any allegations, then commission should disaffirm disciplinary action and instruct the appointing authority to rescind discipline. Appointing authority is to then compensate employee accordingly.

- f. "No Order" Reduction
  - i. Employee must appeal within 90 calendar days of notice of reduction. ([See O.A.C. 124-1-03\(E\)](#); [O.A.C. 124-1-02\(X\)](#) and [\(Y\)](#) for definitions of reduction; [O.A.C. 124-1-02\(L\)](#), for definition of "notice.")
  - ii. Burden on employee to prove his/her duties, pay and/or classification has been reduced.
  - iii. Appointing authority has the right to rebut.
  - iv. If employee meets burden, appointing authority will be ordered to reinstate employee's duties, pay and/or classification.
  - v. If employee fails to meet burden, case should be dismissed.

**Please note that civil service commissions should be sensitive to certain circumstances that may arise when or because civil service commissions exercise both personnel and adjudicatory powers. In order to better manage these circumstances, we suggest contacting your legal counsel for assistance.**

### C. [Non-Disciplinary Appeals](#)

- 1. Layoffs, Abolishments, Reclassifications, Transfers.
- 2. Layoffs and Abolishments.
  - a. Layoffs must be done in accordance with [O.R.C. 124.321](#), as applicable. (Case Law: "Substantial compliance" with procedural requirements for layoffs.)
  - b. Employee's appeal must be filed or postmarked within 10 calendar days after receipt of notice of abolishment, layoff, or displacement.
  - c. Layoff is temporary (less than 1 year). ([See O.R.C. 124.321](#))
  - d. Abolishment generally refers to a long-term reduction in force.
  - e. Layoffs result from:
    - i. Lack of funds.
    - ii. Lack of work.
    - iii. Abolishment.
  - f. Hearing procedures for appeal from Layoff.

- i. Substantial compliance with procedural aspects
  - ii. Appointing authority should file statement of rationale with commission to support layoff.
  - iii. Burden on appointing authority to prove rationale for layoff. (i.e. lack of funds, lack of work, abolishment)
  - iv. Employee has opportunity to rebut and/or prove bad faith on part of appointing authority.
  - v. If appointing authority meets burden, then layoff affirmed.
  - vi. If appointing authority fails to meet burden, then employee should be reinstated.
- g. Abolishments result from:
- i. Reasons of economy.
  - ii. Lack of work expected to last more than 1 year.
  - iii. Reorganization for efficient operation.
- h. Hearing procedures for appeal from Abolishments.
- i. Appointing authority determines if abolishments necessary – statement of rationale must be filed with commission.
  - ii. Burden on appointing authority to prove above elements by a pre-ponderance of the evidence.
  - iii. Employee has opportunity to rebut and/or prove bad faith on part of appointing authority.
  - iv. If appointing authority meets burden, then abolishment affirmed.
  - v. If appointing authority fails to meet burden, then employee reinstated.
3. Reclassification.
- a. Appeal from reclassification must be filed in writing within 30 calendar days after receiving notice from final audit result.
  - b. Assumes formal class plan exists.
  - c. Requires determining how an employee spends his/her time and matching that to the class plan's specifications.

- d. Non-adversarial de novo hearing. The examination of the witnesses is conducted by the adjudicating body. ([See O.A.C. 124-7-02](#))
  - e. Adjudicating body determines what duties employee performs by hearing testimony from employee and immediate supervisor. If the city has completed its own job audit, testimony may also be taken from the person who conducted the audit or from a person who is familiar with the audit.
  - f. Adjudicating body reviews and makes determination as to proper classification.
4. Transfers.
- a. Appeal must be filed within 10 calendar days after employee's receipt of notice of transfer.
  - b. Definition: Movement of an employee between different offices or positions as set forth in [O.R.C. 124.32](#) and [O.R.C. 124.33](#). (A change in job location within the same classification, the same appointing authority and same county is not appealable.) ([See O.A.C. 124-1-02\(EE\)](#))
  - c. Employee cannot appeal a temporary transfer unless it is a second temporary transfer within a six-month period.
  - d. Appointing authority must prove that transfer is necessary for efficient operation or that position, by its nature, is subject to systematic changes.
  - e. Employee can also appeal permanent transfer (excess of 30 days).
  - f. Appointing authority must first obtain approval of the transfer from the commission.
  - h. If appointing authority meets burden of proof, transfer upheld; if appointing authority fails to meet burden of proof, transfer disaffirmed.

### III. JUDICIAL REVIEW

- A. Process Governed by O.R.C. Chapter 2506.
- B. Procedure Analogous to O.R.C. 119.12, which governs SPBR.
  - 1. Local Court of Common Pleas sits as an appellate court. Generally, court must confine its review to the record submitted by the commission unless it is incomplete or appears the appellant did not receive a fair administrative hearing. ([See O.R.C. 2506.03](#))
  - 2. The commission must supply a written transcript and copies of all documents considered at the commission hearing. ([See O.R.C. 2506.02](#))
  - 3. Standard of Review: The reviewing court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. ([See O.R.C. 2506.04](#))

4. Consistent with the reviewing court's findings, it may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the body appealed from with instructions. ([See O.R.C. 2506.04](#))

**“Municipal Civil Service Commissions: Guidelines for Conducting Employee Hearings” is provided by the State Personnel Board of Review to raise awareness regarding Ohio’s civil service laws. The contents of this document should not be considered legal advice.**

**Please contact SPBR at (614) 466-7046 with specific questions.**

## APPENDIX A

A QUICK REFERENCE LIST FOR  
EMPLOYEE APPEAL/HEARING PROCESS

## A QUICK REFERENCE LIST FOR EMPLOYEE APPEAL/HEARING PROCESS

### **Consider Jurisdiction:**

#### Over parties:

- ✓ Is employee in the classified service? (Outline p. 2/[O.R.C. 124.01\(C\)](#), [O.R.C. 124.11](#))

#### Over action:

- ✓ Is subject matter underlying appeal one enumerated in [O.R.C. 124.03/O.R.C. 124.40](#)? (Outline pp. 1, 2)
- ✓ Is appeal timely? (Outline pp. 5, 6, 7, 8, 9/[O.A.C. 124-1-03](#))
- ✓ If appeal is disciplinary, has appointing authority followed requirements of [O.A.C. 124-3-01](#)? (Outline p. 5/ [O.A.C. 124-3-01](#))

### **Consider Practice and Procedure Throughout Appeal/Hearing Process:**

- ✓ Motion practice. (Outline pp. 3, 4, 5)
- ✓ Discovery. (Outline pp. 3, 4, 5)
- ✓ Depositions and interrogatories. (Outline p. 4)
- ✓ Subpoenas. (Outline p. 4)
- ✓ Witnesses. (Outline p. 3)
- ✓ Appearances. (Outline p. 3)
- ✓ Procedural orders. (Outline p. 3)
- ✓ Procedure in record hearings. (Outline pp. 3, 4)
- ✓ Record of hearings. (Outline p. 4)
- ✓ Transcripts. (Outline p. 4)

### **Disciplinary Hearings:**

- ✓ If appeal is disciplinary, has appointing authority conducted a pre-disciplinary hearing or has employee waived pre-disciplinary hearing? (Outline pp. 4, 5)
- ✓ Burden of Proof. (Outline pp. 5, 6, 7)
- ✓ Standard of Conduct. (Outline p. 5)
- ✓ Rebutting Evidence. (Outline p. 6)
- ✓ Merger and Bar. (Outline p. 6)
- ✓ Laches. (Outline p. 6)
- ✓ Decision by Adjudicating Body. (Outline p. 6)
- ✓ “No Order Reduction” Appeals. (Outline p. 6)

### **Non-Disciplinary Hearings:**

- ✓ Layoffs/Abolishments. (Outline pp. 7, 8)
- ✓ Reclassifications. (Outline pp. 8, 9)
- ✓ Transfers. (Outline p. 9)

### **Judicial Review:**

- ✓ Transcript of Hearing/Documents (Outline p. 10)  
Standard of Review (Outline p. 1)

APPENDIX B  
"SECTION 124.34 ORDER" FORM

# Order of Removal, Reduction, Suspension, Fine, Involuntary Disability Separation

M \_\_\_\_\_

This will notify you that you are;  removed;  suspended;  suspended (working);  fined;  
 involuntary disability separated;  reduced in pay, from your position of

\_\_\_\_\_ and/or reduced to new position of \_\_\_\_\_  
effective \_\_\_\_\_ (date) (if applicable)

The reason for this action is that you have been guilty of (List relevant R.C. 124.34 disciplinary offense(s)).  
(Section not applicable for involuntary disability separation.)

**Specifically:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice of pre-disciplinary/separation hearing given to employee: \_\_\_\_\_  
(date)

Pre-disciplinary/separation hearing held or waived: \_\_\_\_\_  
(date)

Employee allowed to meet with employer:  Yes  No

Order hand-delivered to employee: \_\_\_\_\_  
(date, if hand-delivered)

If employee is suspended, list dates of suspension: \_\_\_\_\_

Signed at \_\_\_\_\_ Ohio, \_\_\_\_\_  
(city) (date)

Counter signature, if applicable

Signature of Appointing Authority

Counter signature, if applicable

Type Name and Title of Appointing Authority

Counter signature, if applicable

Type Department, Agency, or Institution

## **“SECTION 124.34 ORDER” FORM INSTRUCTIONS**

### **IMPORTANT INSTRUCTIONS TO THE APPOINTING AUTHORITY**

(1) Actual signature means that each Order served on the employee must contain the actual signature of the Appointing Authority. Appointing Authority means the actual appointing officer of the department or agency as well as any approving officer or board required by law. If the appointment of an employee requires the approval of a board or commission, then a certified copy of the resolution of such board or commission approving the action must accompany this Order unless the actual signatures of the members of the board or commission appear on the front of the Order served on the employee.

(2) The Appointing Authority must set forth in detail the particular acts and circumstances constituting the offense(s) charged. Evidence presented on appeal must be limited to that which relates to the charge(s) made; hence the Appointing Authority must set forth the charges(s) broadly enough to encompass all the evidence the Appointing Authority intends to offer. It is equally important that the Appointing Authority fully state the ground(s) for the action.

(3) The Appointing Authority **MUST** provide an original of the Order to the employee on or before the effective date. The date on which the Order is served is the date the Order is delivered to the employee by hand or to the employee's last known mailing address by certified United States mail, whichever occurs first.

### **IMPORTANT INSTRUCTION TO THE EMPLOYEE**

If you wish to appeal this action, then you must file your written appeal with the State Personnel Board of Review (SPBR) at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213. **Your appeal must actually be received and time stamped by SPBR by the tenth calendar day from the date the Order was served.** For the purposes of your appeal, the date on which the Order is served is the date the Order is delivered to you by hand or to your last known mailing address, as maintained by your Appointing Authority, by certified United States mail, whichever occurs first. You may obtain SPBR's Administrative Rules by writing the above office or by telephoning SPBR at (614) 466-7046. You may also obtain the rules at SPBR's website at <https://pbr.ohio.gov>.

#### ***Example of deadline to file appeal:***

An employee is given a 40-hour suspension. The suspension is to begin on October 11 and run five working days through October 15. The employee is served with the forthcoming suspension Order on October 8. The employee has until October 18 to file a written appeal (10 days from the date the employee was served with the Order).

**Reminder: If you are employed by a municipality or township that has a civil service commission, your appeal lies with that commission and not SPBR.**

You may contact SPBR at (614) 466-7046 regarding the above information or regarding SPBR's jurisdiction or you may visit our website at <https://pbr.ohio.gov>.