

CHAPTER 19

Grievances

A. Statement

This Chapter applies to all employees including represented and certified employee units. The City of Avondale, in keeping with its policy of maintaining satisfactory working conditions, will provide a means to ensure fair handling of employee complaints and grievances. Any employee whose state of mind is so affected by a grievance that he/she will not endeavor to, or cannot do the proper thing in course of performing his/her regular duties should immediately pursue the prescribed procedures for grievances.

B. Matters Subject to Grievances

1. For the purpose of this Chapter, a grievance means any dispute regarding the meaning, interpretation, or alleged violation of these policies and procedures.
2. Any employee in the classified service will have the right to appeal, under this rule, a decision affecting his/her employment, over which his appointing power has partial or complete jurisdiction, with the exception of suspensions, demotions, reductions in pay in lieu of suspension, or terminations which will be appealed directly to the Independent Hearing Officer, through the Assistant City Manager or designee as provided by these policies.

C. Matters Not Subject to Grievance

As discussed above, suspensions, demotions, reductions in pay in lieu of suspension, and terminations are not grievable. In addition, an employee cannot grieve the contents of a performance evaluation, the lack or amount of a pay increase (merit or otherwise) or any form of reprimand. In addition, an employee that is a member of a certified Employee Group pursuant to Chapter 2, Article II, Division 4, Section 2-56 of the Avondale City Code, may not grieve any issue covered under a Memorandum of Understanding. In addition, part-time employees are not entitled to any rights pursuant to this Chapter. Finally, an employee may not file a grievance for any concern more than fifteen (15) working days after the employee first becomes aware of it.

D. Procedures

1. Informal Grievance Procedure

- a. An employee who has a problem or complaint should first try to get it settled through discussion with his/her immediate supervisor without undue delay.
- b. If, after this discussion, he/she does not believe the problem has been satisfactorily resolved, he/she will have the right to discuss it with his/her supervisor's immediate

department director. If the employee's supervisor does not have a department director, he/she shall discuss the matter with Human Resources. In some circumstances, Human Resources will determine that matter should be referred to the City Manager, or his/her designee, at this stage.

- c. Every effort should be made to find an acceptable solution by informal means at the lowest level of supervision. If an employee fails to follow this informal procedure, the grievance will be denied and he/she will not be permitted to proceed to the formal grievance procedure outlined below.

2. Formal Grievance Procedure

Levels of review through the chain of command are listed below:

a. First Level of Review

- (1) If the employee has properly followed the informal grievance procedure and the matter is not resolved, the employee is eligible to elevate the grievance to the first level. Initially, the employee must reduce the grievance to writing citing the article and section of the personnel policies and procedures alleged to be violated, the date of the violation that is the basis for the grievance, the nature of the grievance, and the relief requested.
- (2) This grievance should be presented to the employee's immediate supervisor, within fifteen (15) working days of the occurrence, and no later than ten (10) working days after the informal grievance procedure has been fully exhausted. The supervisor will render his/her decision and comments in writing and return them to the employee within fifteen (15) working days after receiving the grievance.
- (3) If the employee does not agree with his/her supervisor's decision, or if no answer has been received within fifteen (15) working days, and the employee wishes to continue in the grievance process, the employee may present the grievance in writing to his/her supervisor's immediate department director (the "second level supervisor").
- (4) Failure of the employee to take further action within ten (10) working days after receipt of the written decision of his/her supervisor or within a total of twenty-five (25) working days after presentation of the grievance to the employee's immediate supervisor if no decision is rendered, will constitute a withdrawal of the grievance.

b. Further Level(s) of Review as Appropriate

- (1) The second level supervisor receiving the grievance will review it, render his/her decision, and comments in writing, and return them to the employee within fifteen (15) calendar days after receiving the grievance.
- (2) If the employee does not agree with the second level supervisor's decision, or if no answer has been received within fifteen (15) working days after the second level supervisor received the grievance, and the employee wishes to continue in the grievance process, he/she may present the grievance in writing to the City Manager – through the Human Resources Director.
- (3) Failure of the employee to take further action within ten (10) working days after receipt of the decision, or within a total of twenty-five (25) working days of referral to his/her second level supervisor if no decision is rendered, will constitute a withdrawal of the grievance.

c. City Manager

- (1) Upon receiving the grievance, the City Manager or designee should discuss the grievance with the employee and with other appropriate persons.
- (2) The City Manager or designee may designate a fact-finding committee or supervisor to advise him/her concerning the grievance.
- (3) The City Manager or designee will render a final decision. Grievances may not be appealed to the Independent Hearing Officer.

3. Appeal to the Personnel Board

a. Right to Appeal

Any regular employee in the classified service will have the right to appeal to the Independent Hearing Officer any disciplinary action by the City which involves termination, demotion, suspension without pay, or reduction in pay in lieu of suspension without pay, except in instances where the right of appeal is specifically prohibited by these policies.

b. Methods of Appeal

- (1) Appeals will be in writing, signed by the appellant, and delivered in person, email or by first-class mail to the Human Resources Director. Appeals must be delivered to the Human Resources Director within ten (10) working days of the date of the disciplinary action to be appealed. The formality of a legal pleading is not required. However, failure to file the appeal on time will constitute a waiver, and the decision will become final.

- (2) Within ten (10) working days after receipt of the appeal, the Human Resources Director will notify the Assistant City Manager, the Independent Hearing Officer, and such other persons named or affected by the appeal.
- (3) Upon filing of an appeal, the Independent Hearing Officer will set a date for a hearing on the appeal not less than ten (10) working days or no more than thirty (30) working days from the date of filing.
- (4) The Human Resources Director will notify all interested parties of the date, time, and place of the hearing. The Human Resources Department will provide administrative assistance to the Independent Hearing Officer.
- (5) The appeal will be a written statement, addressed to the Independent Hearing Officer, explaining the matter appealed, the specific grounds for the appeal (explaining why he/she believes the decision appealed is incorrect), and setting forth therein a statement of the action desired by the appellant. The written appeal will constitute the entire matter before the Independent Hearing Officer. The appellant may not add new matters, grounds, facts, or theories to those already stated in the original appeal. The Independent Hearing Officer will not have jurisdiction to consider any such additional matters, grounds, facts, or theories outside of the written appeal.

c. Independent Hearing Officer

- (1) Pursuant to a periodic solicitation of qualifications or through cooperative solicitation, the City shall establish a list of at least three attorneys (or fewer if an insufficient number of qualified candidates respond to the solicitation), who are licensed and in good standing with the State Bar of Arizona and who have at least five years of experience and knowledge of municipal law and/or employment law, to serve as the Independent Hearing Officer. Upon receipt of a written appeal, the City Manager or designee shall select the Independent Hearing Officer from the qualified list.
- (2) The City shall pay the reasonable fees and costs of the Independent Hearing Officer; however, the Independent Hearing Officer will not represent either the City or the appellant. The duties of the Independent Hearing Officer are to render rulings and determinations pursuant to these rules.
- (3) Independent Hearing Officer

The Independent Hearing Officer shall have the following duties and authority.

(a) Pre-Hearing:

- i. Consider and rule on any pre-hearing motions, including those that could result in the dismissal of the appeal for failure to follow these rules.

- ii. Set reasonable restrictions and deadlines for the timing and conduct of the hearing.
 - iii. Prepare the hearing notice and agenda.
 - (b) Presiding over the Hearing
 - i. Rule on objections and motions by a party, unless they are dispositive of the appeal.
 - ii. Submit his/her findings and recommendations on the merits of the appeal; in accordance with the timeframe and procedure set forth in subsection (f) below.
 - iii. Prepare a written report and recommendation for the City Manager.
- d. Pre-hearing Procedures.

As outlined above, the Independent Hearing Officer shall set the time and place for the hearing. Prior to the hearing, the Independent Hearing Officer shall do the following:

- (1) Within five (5) working days of filing the written appeal with the Human Resources Director, the appellant may request his/her personnel record from the City. Neither party shall be entitled to any additional discovery in this process, except as outlined below.
- (2) At least seven (7) working days prior to the hearing, the City and the appellant shall disclose to one another the witnesses that each anticipates calling, a synopsis of their testimony, and any documents each anticipates presenting to the Independent Hearing Officer. The proposed testimony and exhibits must relate to the written appeal filed by the appellant. Any proposed testimony or exhibits that do not relate to the written appeal shall not be considered or presented. The Independent Hearing Officer will make this determination, as necessary.
- (3) Not less than three (3) working days after the exchange of proposed testimony and exhibits, the parties shall work together to determine if either side objects to any exhibits, and work through those objections. If after consulting with one another, there is still a disagreement, the parties shall file a brief letter (no more than one page) outlining the disputed items to the Independent Hearing Officer. The letter must be filed at least two (2) working days prior to the hearing. If there is no dispute, no letter need be filed. The Independent Hearing Officer shall rule on any disagreement prior to the hearing. All exchanged exhibits will be deemed admissible and presented to the Independent Hearing Officer at the hearing.

e. Hearings

- (1) The appellant shall appear personally and testify before the Independent Hearing Officer at the time and place of the hearing.
- (2) The proposed testimony and exhibits used by the appellant shall only be those permitted pursuant to subsection (d) above. No other witnesses or documents will be considered by the Independent Hearing Officer unless (i) the party can show that it was newly discovered, there was prompt disclosure, and the evidence is crucial or (ii) the Independent Hearing Officer may, at his/her discretion, exclude certain witnesses or documents even if timely disclosed if such evidence would be irrelevant, cumulative, redundant, or overly prejudicial.
- (3) The appellant may be represented by any person (other than the Independent Hearing Officer) or attorney as he/she may select, and at the hearing may produce on his/her behalf relevant oral or documentary evidence.
- (4) The City will present its case first, establishing the reasons for the employment action. At the conclusion of the City's case, the appellant will then present his/her case in opposition. Each side may call its disclosed witnesses. The parties are responsible for securing the attendance of their own witnesses, but the City will make City employees available for the hearing if timely disclosed. The parties do not have any subpoena power to compel a witness's attendance.
- (5) Cross-examination of witnesses will be permitted.
- (6) The conduct and decorum of the hearing will be under the control of the Independent Hearing Officer, with due regard to the rights and privileges of the parties.
- (7) Hearings need not be conducted according to technical rules relating to evidence and witnesses.
- (8) Hearings will be closed or held in executive session, as applicable, unless the appellant, in writing, requests an open, public hearing. A closed hearing does not preclude the attendance of (i) persons necessary to assist in the presentation of evidence and arguments, (ii) the Human Resources Director or authorized designee or (iii) the appellant's department director or authorized designee.

f. Findings and Recommendations

- (1) The Independent Hearing Officer will, within fifteen (15) working days after the conclusion of the hearing, submit his/her findings and recommendations that will be advisory to the City Manager. The Independent Hearing Officer may recommend that the City Manager affirm, revoke, or modify the employment action taken.

- (2) The City Manager or designee will review the findings and recommendations of the Independent Hearing Officer. He/she may then affirm, revoke, or modify the employment action taken as in his/her judgment seems warranted.
- (3) The City Manager or designee will inform the appellant within twenty (20) working days of his/her decision. The action of the City Manager or designee will be final.
- (4) Any member of the Board may submit a minority or supplemental finding and recommendation.

4. Conduct of Appeal Procedure

The time limits specified above may be extended to a definite date by mutual agreement of the employee and the reviewer concerned.

E. Matters Subject to A.R.S. § 38-531

This section does not apply to any persons outside the definition of Employee (as hereinafter defined). When a complaint is filed by a former or current employee (the "Employee") as defined by A.R.S. § 38-531, alleging violation of A.R.S. §§ 38-531 *et. seq.*, the City Manager shall convene an *ad hoc* independent personnel board ("Board") pursuant to A.R.S. §§ 38-532 and 534, which shall consist of five (5) members having the following qualifications:

1. Three (3) members who are residents of the City, not employed by the City, and not related to the Employee;
2. One (1) member who is employed by another municipality as an administrator in the department of human resources or personnel and who is not related to the Employee; and
3. One (1) member who is employed by another municipality, who does not belong to any professional organizations or affiliates that the Employee belongs to and who is not related to the Employee.

The members of the Board shall meet, hear evidence, and decide the following:

1. The validity of the complaint.
2. Whether a prohibited personnel practice, as defined by A.R.S. § 38-532(A), was committed against the employee or former employee as a result of disclosure of information by the employee or former employee.

The provisions of A.R.S. § 38-532 are incorporated by this reference.

E. For the purposes of this Chapter:

1. "Working Days" means Monday through Thursday, exclusive of City designated Holidays.