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2022 OA-059

AMENDING CHAPTER 18 OF THE DANE COUNTY CODE OF ORDINANCES,
UPDATING DANE COUNTY'S CIVIL SERVICE ORDINANCE

The County Board of Supervisors of the County of Dane does ordain as follows:

ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

ARTICLE 2. Section 18.06(6) is amended to read as follows:

(6) An employee group's representative may grieve the location of any position or positions in any employee group, managerial or confidential classification.

ARTICLE 3. Section 18.20 (1) is amended to read as follows:

(1) No person in the county service or seeking appointment thereto shall be appointed, receive a reduction in pay or in any other way be favored or discriminated against because of political, labor union, employee group or religious affiliations or activities or because of sex, gender identity, race, nationality, age, sexual orientation preference, marital status, physical appearance or disability. This section shall not be deemed to prohibit the making of rational classifications based upon sex or disabilities when a bona fide job-related reason exists for the distinction, or to prohibit a validly established program of mandatory retirement.

ARTICLE 4. Section 18.24(5) is amended to read as follows:

(5) Exceptions.

(a) The ~~Division Director of Administration~~ may request that the Committee make individual, temporary, or situation specific exceptions to Employee Benefit Handbook provisions, after reasonable notice to, and, if requested, meeting with interested stakeholders. The Division shall provide reasonable notice to interested stakeholders prior to making any such request to the Committee, and shall meet with interested stakeholders, if requested to do so. The Committee shall hold a hearing prior to approving any requested exception. Exceptions shall automatically expire when the Board subsequently approves revisions to the Employee Benefit Handbook or at an earlier date specified in the exception.

ARTICLE 5. Section 18.24(8) is created to read as follows:

(8) Mandatory Provisions. The Employee Benefit Handbook shall include the following provisions:

(a) Bulletin Boards and E-Mail Use. The County shall provide the following for purposes of employee information dissemination by an employee group's representative or interested stakeholder:

- 47 1. Use of bulletin board space in convenient places in each work area; and
48 2. Reasonable use of the county electronic mail system, which shall allow
49 interested stakeholders and employee group’s representatives to use county email
50 to conduct the business of their associations, including sending emails and
51 maintaining distribution lists.
52 3. The posting of notices shall be by employee group representative stewards,
53 or their designee, or an interested stakeholder.
54 (b) Employee Group Representation and Work-Related Associations.
55 1. It is the policy of Dane County to encourage interested stakeholders to
56 participate in work related associations and activities. Reasonable time spent in
57 the conduct of these activities with notice to the interested stakeholder’s supervisor
58 shall not be deducted from the interested stakeholder’s pay.
59 a. “Work-Related Activities” shall mean those activities an interested
60 stakeholder does to fulfill their job description, civil service activities, and activities
61 associated with work-related associations, including employee group
62 representatives.
63 b. “Work-Related Associations” includes, but is not limited to:
64 i. professional organizations that relate to the employee’s position or
65 profession;
66 ii. committees, task forces or ad hoc groups focused on county workplace
67 issues that are open to employee membership, and;
68 iii. employee group’s representatives.
69 2. Employee Group’s Representatives
70 a. Employees selected by an employee group representative (“EGR”) to act
71 on the behalf of the EGR shall be known as stewards. Employee group’s
72 representatives shall notify the County from time to time of the names of stewards
73 or other officials who may represent employees on behalf of the employee group’s
74 representative.
75 b. Reasonable time spent in the conduct of employee group representational
76 activity during the workday, including but not limited to the posting of notices, the
77 investigation and processing of grievances and participation in discussions related
78 to personnel relations shall not be deducted from the pay of the stewards, other
79 officials, or interested stakeholders.
80 c. EGR Activity Outside of Scheduled Work Hours. Stewards, other officials,
81 or interested stakeholders shall receive hour for hour compensation time for time
82 spent investigating and processing grievances on behalf of employee group
83 members and participating in established labor/management meetings that are
84 conducted outside of their scheduled hours.
85 3. Meet and Confer Scheduling. While engaging in the meet and confer
86 process, stewards, other officials, or interested stakeholders whose scheduled
87 duty hours include one (1) shift that either immediately precedes or follows a meet
88 and confer meeting shall not be required to work that shift and the meeting shall
89 be considered as their shift for the day. The term “immediate” as it is used in this
90 provision, shall mean eight (8) hours or less before or after the meet and confer
91 meeting. If such a meeting is cancelled more than forty-eight (48) hours before
92 the scheduled start time, the affected employee shall work their normal schedule.

93 It is an employee's responsibility to notify their supervisor of the scheduled meet
94 and confer meetings and which work shift will not be worked. The maximum
95 amount of pay an employee may receive under this provision shall not exceed the
96 pay the employee would have received working their regularly scheduled hours.

97 **(c). Grievances**

98 **1. Definition.** A grievance is defined to be a controversy between the employer
99 and any employee, multiple employees or employee group representative(s)
100 related to any of the following:

101 **a.** Any matter involving the interpretation or application of the Employee
102 Benefit Handbook;

103 **b.** Any matter involving an alleged violation of the Employee Benefit Handbook
104 in which an employee, multiple employees, or employee group representative
105 maintain that any of their rights or privileges have been impaired in violation of the
106 Employee Benefit Handbook;

107 **c.** Any matter involving employee terminations, employee discipline or
108 workplace safety as prescribed in Section 66.0509 Wis. Stat.;

109 **d.** Any matter involving an alleged violation of the usual and customary
110 standards in the placement of a position or positions within or outside of any
111 employee group, managerial or confidential classification.

112 **e.** Determinations of whether or not a particular incident or alleged violation is
113 subject to grievance under the terms described above.

114 **2. Grievance Process.** Grievances shall be processed in the following
115 manner: (Time limits set forth shall be exclusive of Saturdays, Sundays and
116 holidays.)

117 **a.** The number of representatives attending the meeting(s) will be kept to the
118 minimum necessary to adequately represent each party. The number of attendees
119 will be discussed in advance with the goal of facilitating this paragraph and to keep
120 the number attending from each party relatively equal.

121 **b.** In cases involving employee discipline, the employee group representative
122 or other individuals acting on behalf of an employee group will only receive notice
123 and participate in the grievance process if authorized by the grieving employee.

124 **c. Grievance Steps.**

125 **i.** Step 1: An Employee, multiple employees (hereinafter "the Aggrieved" or
126 "Grievant"), employee group representative, and/or any other representative
127 authorized by the grievant, if any, shall take the grievance up orally with the
128 employee's grievant's first line of supervision outside of the employee group within
129 ten (10) days of their knowledge of the occurrence of the event. The supervisor
130 shall attempt to make a mutually satisfactory adjustment, and, in any event, shall
131 be required to give an answer within ten (10) days to the grievant, if any, and their
132 representative, if any, and to the employee group representative, if allowed under
133 this policy.

134 **ii.** Step 2. The grievance shall be considered settled in Step 1 unless within
135 ten (10) days after the supervisor's answer is due, the grievance is reduced to
136 writing and presented to the department head. The department head shall respond
137 to the grievance in writing within ten (10) days to the grievant(s), if any, and to the
138 grievant's representative, if any. A copy of the written grievance shall be provided

139 to the employee group representative, if allowed under this policy. A grievance for
140 discipline, suspension or discharge may be started at step 2.

141 iii. Step 3. The grievance shall be considered settled in Step 2 unless within
142 ten (10) days from the date of the department head's written answer or last date
143 due the grievance is presented in writing to the County Executive or designee
144 (Director of Administration or Chief of Staff of County Executive). The County
145 Executive or designee shall respond in writing to the grievant(s), if any, to and the
146 grievant's authorized representative, if any, and to the steward, president, and staff
147 representative of the employee group representative within ten (10) days, if
148 allowed under this policy. Grievances involving the general interpretation,
149 application, or compliance with the Employee Benefit Handbook may be initiated
150 at step 3. A grievance concerning a discharge may be started at Step 3 or, if the
151 parties agree, may be started at the Impartial Hearing step.

152 iv. Step 4. If a grievance is not settled at the third step, the employee and/or
153 representative authorized by the employee, if any, or the employee group
154 representative may appeal the matter to an impartial hearing.

155 3. Impartial Hearing.

156 a. The grievance shall be considered settled in Step 3 above, unless within
157 thirty (30) days after the last response is received, or due, the dissatisfied party
158 (either the grievant, representative authorized by the employee, or the County)
159 shall request in writing to the other that the dispute to be submitted to an impartial
160 hearing before an impartial hearing officer.

161 b. A panel of Impartial Hearing Officers (IHO) has been established from which
162 the IHO will be selected. The IHO shall, if possible, be mutually agreed upon by
163 the parties to the grievance. If agreement on the IHO is not reached within ten
164 (10) days after the date of the notice requesting an impartial hearing, then the IHO
165 shall be selected by the parties within five (5) days from the panel using an
166 alternate strike process or other agreeable means. Each party shall pay one half
167 (1/2) of the cost of the impartial hearing.

168 c. The IHO shall have the authority to determine issues concerning the
169 interpretation and application of all Sections of the Employee Benefit Handbook
170 and any matter concerning employee terminations, employee discipline or
171 workplace safety. The IHO shall have the authority to determine issues of
172 substantive and procedural jurisdiction and the parties to the grievance procedure
173 shall not refuse to submit such issues to the IHO. They shall have no authority to
174 change any part of the Employee Benefit Handbook; however, they may make
175 recommendations for changes when in their opinion such changes would add
176 clarity or brevity which might avoid future disagreements.

177 d. If the aggrieved party is proceeding without a representative, the employee
178 group representative shall be timely notified of the hearing and shall have a right
179 to provide input in the hearing as allowed under this policy. The employee group
180 representative shall provide written notice to the aggrieved party and the County
181 of its intent to participate in the impartial hearing within 10 days of receiving notice
182 of the hearing. If the employee group representative participates, the IHO shall
183 provide it with an opportunity to be heard and to otherwise participate in the hearing
184 equal to that of the other parties.

185 **e.** The IHO will conduct a hearing on the grievance in a manner that ensures
186 that a record of proceedings is created and preserved. In grievances resulting
187 from an employee discharge, the hearing will be scheduled within thirty (30) days
188 of the notice of selection. The IHO shall have the authority to administer oaths,
189 issue subpoenas at the request of the parties, and shall determine if a transcript of
190 proceedings is necessary. Absent mutual agreement between the parties to the
191 grievance procedure, the IHO process shall not include pre-hearing motion
192 practice. The IHO may require the parties to submit documents and witness lists
193 in advance of the hearing. The burden of proof at the hearing shall be the
194 “preponderance of the evidence” standard. The IHO shall admit all testimony
195 having reasonable probative value, but shall exclude immaterial, irrelevant or
196 unduly repetitious testimony or evidence that is inadmissible under s. 901.05 of the
197 Wisconsin statutes. The IHO shall give effect to the rules of privilege recognized
198 by law. Basic principles of relevancy, materiality and probative force shall govern
199 the proof of all questions of fact. Objections to evidentiary offers and offers of proof
200 of evidence not admitted may be made and shall be noted in the record.

201 **f.** The written determination of the IHO, in conformity with their jurisdiction,
202 shall be implemented unless reversed upon appeal to the County Board. The
203 determination shall be rendered within thirty (30) days following the final day of
204 hearings or receipt of briefs, whichever is later. In grievances resulting from an
205 employee discharge, briefs will be due within thirty (30) days following the final day
206 of hearings. Any brief not postmarked on or before the date set by the parties at
207 the conclusion of the hearing as the date for submission of briefs shall not be
208 considered or accepted by the IHO and shall be returned to the party submitting
209 same with a letter of transmittal. The other party shall receive a copy of the letter
210 of transmittal.

211 **g.** The grieving employee(s), employee group representative(s) and witnesses
212 as allowed under this policy may be present at the impartial hearing without loss
213 of regular wages if the hearing is scheduled during said employee’s regularly
214 scheduled hours of work. The number of representatives attending the meeting(s)
215 will be kept to the minimum necessary to adequately represent each party. The
216 number of attendees will be discussed in advance with the goal of facilitating this
217 paragraph and to keep the number attending from each party relatively equal.
218 Employees who are scheduled to work second or third shift shall receive hour for
219 hour compensatory time for time spent in a hearing that is conducted outside of
220 their scheduled work hours.

221 **4.** *Appeal of Impartial Hearing Officer’s (IHO) Decision*

222 **a.** The aggrieved party, their authorized representative, or the County may
223 appeal the written decision of the IHO to the County Board (“the Board”), which
224 may delegate authority to review same to the Personnel & Finance Committee.
225 Notice of appeal must be made in writing within thirty (30) days after the receipt of
226 the written determination. A copy of the notice of appeal must be furnished to the
227 other parties, at the same time it is submitted to the Board.

228 **b.** The County Board or, if delegated by the Board, the Personnel & Finance
229 Committee, shall consider the full record of proceedings conducted before the IHO.
230 The Board or Personnel & Finance Committee shall accept and consider a written

231 brief of the appealing party that identifies the grounds for overturning or modifying
232 the written determination of the IHO. The Board or Personnel & Finance
233 Committee shall also provide the other party an opportunity to respond in writing
234 to the appealing party's written brief. The Board or Personnel & Finance
235 Committee shall permit the appealing party to file a written reply in support of its
236 appeal to the written responses, if any, of another party.

237 c. The Board may, overturn the IHO's decision only upon determining that:

238 i. The decision was procured by corruption, fraud or undue means;

239 ii. There was evident partiality or corruption on the part of the IHO;

240 iii. The IHO was guilty of misconduct in refusing to postpone the hearing, upon
241 sufficient cause shown, or in refusing to hear evidence pertinent and material to
242 the controversy; or of any other misbehavior by which the rights of any party have
243 been prejudiced;

244 iv. The IHO exceeded their powers, or so imperfectly executed them that a
245 mutual, final and definite determination upon the subject matter submitted was not
246 made.

247 d. The Board may modify or correct a monetary award included in the IHO's
248 determination only if there is a material miscalculation of figures or material
249 mistake in the description of any person, thing or property referred to in the award.

250 5. Extensions of time. The time limits set forth in the foregoing steps may be
251 extended by mutual agreement in writing.

252 (d) Orientation of New Employees.

253 1. Employee group representatives will be given thirty minutes during regularly
254 scheduled new employee orientation, to orient new employees to the employee
255 group, encourage voluntary employee group representative membership, and to
256 distribute group-related information.

257 2. All new-employee orientations shall be recorded in their entirety. The
258 Division shall keep recordings of new-employee orientations consistent with its
259 record retention policy. The Division shall make recordings available to any
260 stewards, officers, or interested stakeholders, upon request.

261
262 *[EXPLANATION: This amendment updates the civil service ordinance, and*
263 *creates mandatory Employee Benefit Handbook provisions.]*