

## D.C. OFFICE OF PERSONNEL

## NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title IX-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.51 *et seq.*) (2001), hereby gives notice of the adoption of the following emergency rules. The main purpose of these emergency rules is to amend section 3818.1 of Chapter 38 of Title 6 of the District of Columbia Municipal Regulations (DCMR), Management Supervisory Service, to change the requirement that the appropriate agency head and Deputy Mayor authorize each termination action under the chapter before the action is initiated, and instead require that the agency head and the personnel authority authorize each termination action, and in the case of the D.C. Office of Personnel, that the agency head and the Chief of Staff for the Mayor authorize each termination action. This amendment stems from the changes to the Deputy Mayor structure made by Mayor Adrian M. Fenty upon taking office. Additionally, sections 3801 and 3816 were amended to add language on the new Management Supervisory Service Pay Schedule ("MS Schedule"). Finally, amendments were made to section 3808, on *noncompetitive placement*; and section 3811, on *placement by reassignments or demotion*. The utilization of emergency rulemaking is the only available means to immediately effect the change to the authorization process for termination actions and communicate the change to agency heads, City Administrator, and Management Supervisory Service (MSS) employees. Accordingly, to ensure the welfare of the public, action was taken on January 24, 2007 to adopt the following rules on an emergency basis effective January 24, 2007. These rules will remain in effect for up to one hundred twenty (120) days from January 24, 2007 unless earlier superseded by another rulemaking notice.

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title IX-A of the CMPA, hereby gives notice of the intent to adopt the following rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The main purpose of these emergency rules is to amend section 3818.1 of Chapter 38 of Title 6 of the District of Columbia Municipal Regulations (DCMR), Management Supervisory Service, to change the requirement that the appropriate agency head and Deputy Mayor authorize each termination action under the chapter before the action is initiated, and instead require that the agency head and the personnel authority authorize each termination action, and in the case of the D.C. Office of Personnel, that the agency head and the Chief of Staff for the Mayor authorize each termination action. This amendment stems from the changes to the Deputy Mayor structure made by Mayor Adrian M. Fenty upon taking office. Additionally, sections 3801 and 3816 were amended to add language on the new Management Supervisory Service Pay Schedule ("MS Schedule"). Finally, amendments were made to section 3808, on *noncompetitive placement*; and section 3811, on *placement by reassignments or demotion*. Upon adoption, these rules will amend Chapter 38, Management Supervisory Service, of Title 6 of the DCMR, Management Supervisory Service, published at 48 DCR 2812 (March 30, 2001) and amended at 50 DCR 7747 (September 12, 2003), 51 DCR 9707 (October 15, 2004), 52 DCR 1314 (February 11, 2005), 52 DCR 1913 (February 25, 2005 – Errata Notice), and 52 DCR 6840 (July 22, 2005).

## CHAPTER 38

## MANAGEMENT SUPERVISORY SERVICE

*Chapter 38 of the D.C. Personnel Regulations is amended as follows:*

*The heading of section 3801 is changed from "Compensation System and Pay Schedules;" and the section is amended to read as follows:*

**3801 COMPENSATION SYSTEM AND SALARY AND RATE SCHEDULES FOR MANAGEMENT SUPERVISORY SERVICE EMPLOYEES**

- 3801.1 The compensation provisions of Chapter 11 of these regulations are applicable to all positions in the Management Supervisory Service.
- 3801.2 As applicable, individuals appointed to the Management Supervisory Service shall be paid from either:
- (a) The Management Supervisory Service Rate Schedule, the symbol for which is MW, which is the rate schedule applicable to Management Supervisory Service employees for whom compensation is established on an hourly basis; or
  - (b) The Management Supervisory Service Pay Schedule ("MS Schedule"), the symbol for which is MS. The MS Schedule, which was approved by Council Resolution 16-703, effective July 11, 2006, is the salary schedule applicable to Management Supervisory Service employees for whom compensation is established on an annual basis. The MS Schedule is divided into grade levels 11 through 16 and consists of an open range with no steps, only a "minimum," "midpoint," and "maximum" as reference points of the range for each grade level.
- 3801.3 The rates of pay on a Management Supervisory Service salary or rate schedule shall not be used to set pay upon subsequent appointment to a position in the Career Service.

*Sections 3808.1 (b) through (d) are grouped into a new section 3808.1 (b), as follows:*

- 3808.1 (b) The following types of Management Supervisory Service reassignments, transfers, or demotions:
- (1) An indefinite reassignment pursuant to section 3811 of this chapter, to a position of the same grade and promotion potential;
  - (2) A reassignment pursuant to section 3811 of this chapter, for a period of one hundred twenty (120) days or less;
  - (3) A demotion pursuant to section 3811 of this chapter; and
  - (4) A transfer to a position of the same grade with no known promotion potential.

*Sections 3808.1 (e) and (f) are renumbered as 3808.1 (c) and (d), respectively, and amended to read as follows:*

- (c) Consideration of a candidate not given proper consideration in a competitive promotion action; or promotion of an employee who was denied promotion as a result of other error, as ordered by the D.C. Office of Personnel or independent personnel authority; and
- (d) A detail of two hundred forty (240) days or less to a position at a higher grade or to a position with known promotion potential.

*Section 3811 is amended as follows:*

### **3811 PLACEMENT BY REASSIGNMENT OR DEMOTION**

*Sections 3811.1 through 3811.4 are amended to read as follows:*

- 3811.1 A vacant Management Supervisory Service position may be filled by reassignment of a Management Supervisory Service employee to the position, provided that both positions are of the same grade.
- 3811.2 When, as a result of attrition, reduction in force, reorganization, or approved realignment within an agency, a Management Supervisory Service employee ceases to perform managerial or supervisory functions or duties, the employing agency may reassign or demote the employee to a vacant Management Supervisory Service position for which the employee qualifies; provided that there is no reduction in the benefits of the employee, and the position has no greater promotion potential than the position previously held.
- 3811.3 An agency may determine that it is necessary to reassign or demote a Management Supervisory Service employee to a vacant Management Supervisory Service position for which he or she qualifies, for reasons other than those listed in section 3811.2 of this section; provided that there is no reduction in the benefits of the employee, and the position has no greater promotion potential than the position previously held.
- 3811.4 A reassignment or demotion for the reasons and circumstances described in sections 3811.2 and 3811.3 of this section may be effected either competitively or non-competitively, as provided in sections 3807.1 (d) and 3808.1 (b) through (d) of this chapter.

*Sections 3811.5 and 3811.6 are deleted.*

*Section 3811.7 is renumbered as 3811.5 and amended to read as follows:*

- 3811.5 An employee may voluntarily accept a reassignment or demotion for the reasons and circumstances described in sections 3811.2 or 3811.3 of this section or be terminated as specified in section 3818 of this chapter.

*Section 3816 is amended as follows:*

**3816 PERFORMANCE EVALUATION SYSTEM FOR MANAGEMENT SUPERVISORY SERVICE EMPLOYEES**

*Section 3816.1 is amended to read as follows:*

3816.1 Except as provided in section 1414 of Chapter 14 of these regulations, the performance of employees in the Management Supervisory Service shall be evaluated utilizing the performance management system in that chapter.

*New sections 3816.2 through 3816.4 are added to read as follows:*

3816.2 The MS Schedule referenced in section 3801.2 (b) of this chapter provides a varying, pay-for-performance system for Management Supervisory Service employees paid from the schedule. Some of the features of a merit-based pay plan such as the new MS Schedule are:

- (a) Merit pay or pay for performance systems provide the flexibility to:
  - (1) Combine merit or performance-based increases with what is commonly known as a "cost-of-living adjustment" or "market adjustment," or
  - (2) Base the total salary increase the employee receives solely on merit (performance).
- (b) Base-pay increases vary in direct relationship to each employee's performance level;
- (c) The system differentiates between the various levels of performance and rewards employees accordingly through additional compensation;
- (d) The success of the system depends on accurate and realistic performance evaluations by supervisors; and
- (e) The system provides flexibility for varying budget constraints and revenues.

3816.3 For employees paid under the MS Schedule, each personnel authority, in consultation with the Office of the Chief Financial Officer, shall do all of the following every year:

- (a) Determine the percentage of the performance-based or merit pay increase for employees who received a Performance Plan for the year, and whose level of competence and job performance is determined to be acceptable or better as evidenced by a performance rating of "Meets Expectations" (Level 3), or higher;
- (b) Determine the total percentage of the annual salary increases for these employees; and

(c) Communicate the plan to agency heads.

3816.4 An eligible Management Supervisory Service employee whose salary is at the top of the range for the grade level of the position he or she occupies and who meets the requirements in section 3816.3 (a) of this section, shall receive a one-time (1-time) lump sum payment for the calendar year in question, the amount of which shall not exceed the percentage afforded to other eligible agency employees with the same performance rating.

*Section 3818.1 is amended to read as follows:*

3818.1 No termination action shall be initiated under this chapter unless first authorized by the agency head (or his or her designee) and the Director of Personnel or independent personnel authority, as applicable, except that a termination action of a Management Supervisory Service employee in the D.C. Office of Personnel shall be first authorized by the agency head (or his or her designee) and the Chief of Staff for the Mayor.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Acting Director of Personnel, 441 4<sup>th</sup> Street, N.W., Suite 310S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.