

D.C. OFFICE OF PERSONNEL**NOTICE OF FINAL RULEMAKING**

The Interim 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 §§ 1651 through 1654 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-616.51 *et seq.*), as amended by D.C. Law 15-162, the Enforced Leave Amendment Act of 2004 (Act), effective May 18, 2004 (D.C. Act 15-397, 51 DCR 3628), hereby gives notice that final rulemaking action was taken to adopt these rules. The Act provides that enforced leave that lasts ten (10) days or more may be appealed to the Office of Employee Appeals (OEA), and that the written final decision to place an employee on enforced leave shall inform the employee of his or her right to file an appeal with the OEA for any enforced leave that lasts ten (10) days or more.

Accordingly, the main purpose of these rules is to amend Chapter 16 of the *D.C. Personnel Regulations*, General Discipline and Grievances, to add the aforementioned provisions of the Act to the chapter. Additionally, these rules renumber § 1615, Enforced Leave: General Discipline, as 1619 and rename the section; renumber §§ 1616 through 1619 as 1615 through 1618, respectively; make corresponding changes to sections referencing the renumbered sections; and make other minor modifications to the chapter. No comments were received and no changes were made under the notice of proposed rulemaking published at 51 DCR 6651 (7/2/04). Final rulemaking action was taken on August 3, 2004.

CHAPTER 16**GENERAL DISCIPLINE AND GRIEVANCES*****Section 1600.1 is amended to read as follows:***

1600.1 Sections 1601 through 1618 apply to each employee of the District government in the Career Service who has completed a probationary period.

Section 1604.2 is amended to read as follows:

1604.2 A corrective action may be contested as a disciplinary grievance pursuant to § 1617.

Section 1605.2 is amended to read as follows:

1605.2 An adverse action may be appealed to the Office of Employee Appeals pursuant to § 1618. In lieu of appealing to the Office of Employee Appeals, an employee may elect to contest an adverse action as a disciplinary grievance pursuant to § 1617.

Section 1608.1 is amended to read as follows:

1608.1 Except in the case of a summary suspension action pursuant to § 1615 or a summary removal action pursuant to § 1616, an employee against whom corrective or adverse action is proposed shall have the right to an advance written notice, as follows:

- (a) In the case of a proposed adverse action, an advance written notice of fifteen (15) days; or
- (b) In the case of a proposed corrective action, an advance written notice of ten (10) days.

Section 1608.9 is amended to read as follows:

1608.9 An employee against whom a corrective or adverse action is proposed shall be entitled to be retained in an active duty status during the notice period, except when the employee has been placed on administrative leave as provided in §§ 1608.8 or 1619.1.

Section 1614.1 is amended to read as follows:

1614.1 The employee shall be given a notice of final decision in writing, dated and signed by the deciding official, informing him or her of all of the following:

- (a) Which of the reasons in the notice of proposed corrective or adverse action have been sustained and which have not been sustained, or which of the reasons have been dismissed with or without prejudice;
- (b) Whether the penalty proposed in the notice is sustained, reduced, or dismissed with or without prejudice;
- (c) When the final decision results in a corrective action, the employee's right to grieve the decision as provided in § 1617;
- (d) When the final decision results in an adverse action, the right to appeal to the Office of Employee Appeals as provided in § 1618. The notice shall have attached to it a copy of the OEA appeal form; and
- (e) The effective date of the action.

Section 1614.3 is amended to read as follows:

1614.3 The final decision in the case of a summary suspension or summary removal action taken pursuant to §§ 1615 or 1616, respectively, shall be rendered not later than forty-five (45) days from the date of delivery of the summary suspension or summary removal notice, as appropriate, except that the period may be extended as follows:

- (a) When the employee requests and is granted an extension of time in which to respond under § 1611.2; or
- (b) When the employee agrees to an extension of time requested by the agency.

Section 1614.9 is amended to read as follows:

1614.9 The decision made by the deciding official, in the case of a corrective action, shall be the final decision for the purpose of a disciplinary grievance pursuant to § 1617.

Section 1614.10 is amended to read as follows:

1614.10 The decision made by the deciding official in the case of an adverse action shall be the final agency decision for the purpose of an appeal to the Office of Employee Appeals pursuant to § 1618.

Sections 1616 through 1619 are renumbered as 1615 through 1618 and amended to read as follows:

1615 SUMMARY SUSPENSION: GENERAL DISCIPLINE

1615.1 An agency head may summarily suspend an employee when the employee's conduct:

- (a) Threatens the integrity of government operations;
- (b) Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or
- (c) Is detrimental to public health, safety, or welfare.

1615.2 An agency head may summarily suspend an employee under this section only if at the time the summary suspension action is taken, a good faith effort has been made to determine that at least one (1) of the conditions described in § 1615.1 is met; and only if the action is taken for cause pursuant to § 1603. Otherwise, an employee shall be entitled to an advance written notice as specified in § 1608.

1615.3 An employee who is notified by written or oral directive of a summary suspension from his or her position pursuant to this section shall immediately leave his or her duty station or District government facility.

1615.4 Within three (3) days of the summary suspension, the agency head or his or her designee shall provide a written summary suspension notice to the employee that includes all of the following:

- (a) The reason for the summary suspension action;
- (b) The effective date of the summary suspension action and its duration;
- (c) The right to review any material upon which the summary suspension action was based and to receive a copy, if requested;
- (d) The right to prepare a written response, including affidavits and other documentation within six (6) days of receipt of the notice;

- (e) The person to whom the written response is to be presented;
 - (f) In the case of a summary suspension of ten (10) days or more, the right to be represented by an attorney or other representative; and
 - (g) The right to a final decision as provided in § 1614.3.
- 1615.5 The deciding official shall issue a final decision sustaining, reducing, or dismissing the summary suspension action with or without prejudice.
- 1615.6 When the final decision is to sustain or reduce the summary suspension action, the final decision shall inform the employee of his or her right to file a disciplinary grievance when the summary suspension is for less than ten (10) days, or to appeal to the Office of Employee Appeals when the summary suspension is for ten (10) days or more, as applicable.
- 1615.7 When the final decision is to dismiss the summary suspension action or to reduce it to a lesser penalty, any pay lost as a result of the summary suspension action, to the extent that the pay loss exceeds the pay lost as a result of the final decision, shall be restored to the employee.
- 1616 SUMMARY REMOVAL: GENERAL DISCIPLINE**
- 1616.1 An agency head may remove an employee summarily when the employee's conduct:
- (a) Threatens the integrity of government operations;
 - (b) Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or
 - (c) Is detrimental to public health, safety, or welfare of others.
- 1616.2 An agency head may summarily remove an employee under this section only if at the time the summary removal action is taken, a good faith effort has been made to determine that at least one (1) of the conditions described in § 1616.1 is met; and only if the action is taken for cause pursuant to § 1603. Otherwise, the employee shall be entitled to an advance written notice as specified in § 1608.
- 1616.3 An employee who is notified by written or oral directive of a summary removal from his or her position pursuant to this section shall immediately leave his or her duty station or District government facility.
- 1616.4 Within three (3) days of the summary removal, the agency head or his or her designee shall provide a written summary removal notice to the employee that includes all of the following:
- (a) The reason for the summary removal action;
 - (b) The effective date of the summary removal action;

- (c) The right to review any material upon which the summary removal action was based;
 - (d) The right to prepare a written response, including affidavits and other documentation within six (6) days of receipt of the notice;
 - (e) The person to whom the written response is to be presented;
 - (f) The right to be represented by an attorney or other representative;
 - (g) The right to an administrative review, as provided in § 1612; and
 - (h) The right to a final decision as provided in § 1614.3.
- 1616.5 An administrative review, as provided for in § 1612, shall be conducted prior to the issuance of a notice of final decision.
- 1616.6 The deciding official, after considering the report and recommendation of the hearing officer pursuant to § 1612, shall do one (1) of the following, as appropriate:
- (a) Remand the summary removal action to the hearing officer;
 - (b) Designate a new hearing officer to conduct a review de novo; or
 - (c) Issue a final decision sustaining, reducing, or dismissing the summary removal action.
- 1616.7 When the final decision is to sustain the summary removal action, or to reduce it to a suspension of ten (10) days or more or to a reduction in grade, the final decision shall inform the employee of his or her right to appeal to the Office of Employee Appeals, in which case the decision shall have attached to it a copy of the OEA appeal form.
- 1616.8 When the final decision is to reduce the summary removal action to an official reprimand or a suspension of less than ten (10) days, the final decision shall inform the employee of his or her right to file a disciplinary grievance.
- 1616.9 When the final decision is to dismiss the summary removal action, the employee shall be restored to active duty status, and receive back pay and other entitlements, for the period during which the summary removal was in effect.
- 1616.10 Except as provided in § 1616.11, when the final decision is to reduce the summary removal action to a lesser penalty, the employee shall be restored to active duty status, and receive back pay and other entitlements, for the period during which the summary removal was in effect.
- 1616.11 When the final decision is to reduce the summary removal action to a suspension, the number of days during which the employee was separated from government service

shall be applied to reduce the number of days of the suspension imposed by the deciding official, as applicable.

- 1616.12 For time and attendance purposes, a summary removal action taken pursuant to this section shall become effective at the end of the employee's scheduled tour of duty on the effective date of the action.

1617 DISCIPLINARY GRIEVANCES: GENERAL DISCIPLINE

- 1617.1 An employee against whom a corrective action has been taken shall be entitled to contest the final decision as a disciplinary grievance under the procedure set forth in § 1636.
- 1617.2 The filing of a disciplinary grievance shall not serve to stay or delay the effective date of the final decision.

1618 APPEALS TO THE OFFICE OF EMPLOYEE APPEALS

- 1618.1 Unless otherwise authorized or required as provided in §§ 1601.2 through 1601.5, an employee shall be entitled to appeal the following final agency actions to the Office of Employee Appeals (OEA):
- (a) Any final decision regarding an adverse action; or
 - (b) Any final decision placing an employee on enforced leave that lasts ten (10) days or more.
- 1618.2 Any enforced leave lasting less than ten (10) days may be grieved as specified in § 1635.
- 1618.3 Any appeal of an action described in § 1618.1 shall be in accordance with the regulations issued by the OEA, and shall be filed within thirty (30) days of the effective date of the appealed agency action.
- 1618.4 The filing of an appeal to the OEA shall not serve to stay or delay the effective date of the final decision.
- 1618.5 When upon appeal, the action taken by an agency is reversed by the OEA, the remedial action directed by the OEA shall be taken within thirty (30) days of the final decision of the Office, unless the decision is reopened or reviewed in accordance with the regulations of the OEA.

Section 1615 is renumbered as 1619 and amended to read as follows:

1619 ENFORCED LEAVE

- 1619.1 Notwithstanding any other provision of this chapter, a personnel authority may authorize placing an employee on enforced leave if:
- (a) A determination has been made that the employee utilized fraud in securing his or his or her appointment or that he or she falsified official records;
 - (b) The employee has been indicted on, arrested for, or convicted of a felony charge (including conviction following a plea of *nolo contendere*); or
 - (c) The employee has been indicted on, arrested for, or convicted of any crime (including conviction following a plea of *nolo contendere*) that bears a relationship to his or her position; except that no such relationship need be established between the crime and the employee's position in the case of uniformed members of the Metropolitan Police Department or correctional officers in the D.C. Department of Corrections.
- 1619.2 Placement of an employee on enforced leave pursuant to this section is not a corrective or adverse action.
- 1619.3 A personnel authority may propose the placing of an employee on enforced leave in accordance with this section as follows:
- (a) For actions based on any of the conditions described in § 1619.1(a) or (c), only if the personnel authority has a good faith belief that any of the conditions described in § 1619.1(a) or (c) are met after reviewing and considering the information contained in affidavits, legal indictments, charges or complaints, arrest records, or other documents or other credible information; and
 - (b) For actions based on any of the conditions described in § 1619.1(b), only after the personnel authority has obtained official documentation such as affidavits, legal indictments, charges or complaints, arrest records, or other documentation, to support the determination that any of the conditions described in § 1619.1(b) are met.
- 1619.4 If the personnel authority determines that the conditions described in § 1619.1 are met, an employee shall initially be placed on administrative leave for a period of five (5) workdays.
- 1619.5 The first day of the administrative leave period shall be the first workday that immediately follows the day on which the employee was placed on administrative leave pursuant to § 1619.4.
- 1619.6 The proposing official shall issue a written notice to propose placement of an employee on enforced leave. The notice shall inform the employee of the following:

- (a) The reasons for the proposed enforced leave;
 - (b) The specific basis, including affidavits or other documentation, upon which the decision to propose placement of the employee on enforced leave was based and which establishes that the conditions described in § 1619.1 have been met. The employee shall be provided with a copy of the notice;
 - (c) The beginning and ending dates of the five (5) workdays of administrative leave;
 - (d) The beginning date of the proposed enforced leave;
 - (e) The right to make a written or oral response, or both, to the notice, and to furnish written statements of witnesses or other documentation in support of the response, all within one (1) workday of receipt of the notice of proposal;
 - (f) The person to whom the response is to be presented;
 - (g) The right to be represented by an attorney or other representative; and
 - (h) The right to a written final decision within the five (5) workdays of administrative leave.
- 1619.7 Prior to actual delivery of the notice under § 1619.8, initial delivery of the notice proposing placement of an employee on enforced leave may be accomplished by reading the notice to the employee over the telephone.
- 1619.8 During the five-day (5-day) period of administrative leave under § 1619.4, the agency shall deliver the notice proposing placement of an employee on enforced leave to the employee personally, or by leaving a copy at the employee's home with some person of suitable age and discretion who is present.
- 1619.9 The response period provided for in § 1619.6(e) shall begin the first workday that immediately follows the day on which initial delivery of the notice is made, regardless of the method by which delivery was accomplished.
- 1619.10 If a determination is made to place the employee on enforced leave, the written final decision shall inform the employee of the following:
- (a) The placement on enforced leave as provided in § 1619.12;
 - (b) The date the enforced leave is to commence; and
 - (c) The right to grieve the action under the procedure set forth in § 1636, and that if the enforced leave lasts ten (10) days or more, the employee has the right to file

an appeal with the Office of Employee Appeals within thirty (30) days of the final decision.

- 1619.11 The enforced leave period shall commence on the first workday that immediately follows the five (5) workdays of administrative leave, as provided in § 1619.4.
- 1619.12 During the period in which the employee is in the enforced leave status, each day of absence is to be charged against the employee in the following sequence:
- (a) Accrued annual leave, if available, until exhausted;
 - (b) Compensatory time which is authorized and recorded on time and attendance reports, if available, until exhausted; or
 - (c) Leave without pay when annual leave and compensatory time are exhausted or not available.
- 1619.13 If a determination is made not to place the employee on enforced leave, the written final decision shall so inform the employee.
- 1619.14 An employee shall remain on enforced leave until such time as disciplinary action, in accordance with this chapter and taken as a result of the event that caused the administrative action, is effected, or a determination is made that no disciplinary action will be taken.
- 1619.15 If the basis for placing an employee on enforced leave pursuant to this section does not result in disciplinary action pursuant to the provisions of this chapter, any annual leave, compensatory time, or pay lost as a result of the administrative action shall be restored retroactively.

Subsections 1631.1(d), (e), (f), (u), and (y) are amended to read as follows:

- (d) Forfeiture of position due to failure to maintain bona fide District residency, or to meet the residency or domicile requirements, respectively, as provided in Chapter 3 of these regulations;
- (e) Termination or discipline of an employee serving a probationary period as provided in Chapter 8 of these regulations;
- (f) The return or assignment to the position from which promoted or to an equivalent position of an employee who does not successfully complete a supervisory probationary period pursuant to Chapter 8 of these regulations;
- (u) Non-selection for any competitive or non-competitive appointment or promotion from a group of candidates who were properly qualified, ranked, or certified;
- (y) The disallowance of an employee's representative pursuant to this chapter; or

- 1634.1 If otherwise in a duty status, each employee submitting a grievance under the provisions of this chapter may be granted a reasonable amount of official time for preparation or presentation of the grievance.

Section 1635 is amended to read as follows:

1635 TIME LIMITS FOR FILING: GRIEVANCES

- 1635.1 Except as provided in § 1635.2, an employee, former employee or applicant for employment filing a grievance under this chapter shall present the grievance within forty-five (45) days, not including Saturdays, Sundays, and legal holidays, after the date that he or she knew or should have known of the act or occurrence that is the subject of the grievance.
- 1635.2 An employee may file a disciplinary grievance or a grievance of enforced leave that lasts less than ten (10) days, within ten (10) days of receipt of the final decision on the corrective action or the enforced leave.

Section 1699 is amended to modify the definitions of the terms “deciding official,” “disciplinary grievance,” “enforced leave,” “grievance,” “summary removal,” and “summary suspension:”

Deciding official – the individual who issues a final decision on a disciplinary action or enforced leave, in accordance with §§ 1613 and 1619.

Disciplinary grievance – a request for personal relief concerning the final decision on a corrective action, as provided in § 1617.

Enforced leave – involuntary placement of an employee on annual leave, compensatory time authorized and recorded on the appropriate time and attendance reports, or leave without pay, as applicable, as provided in § 1619.

Grievance – any matter under the control of the District government which impairs or adversely affects the interest, concern, or welfare of employees, including but not limited to a request by an employee for relief concerning a final written decision that involuntarily placed him or her on enforced leave that lasts less than ten (10) days, as provided in § 1619.10(c); or a request by an applicant for employment for non-monetary relief in matters involving the application of the merit staffing process; or a request by a former employee for relief in a matter of concern or dissatisfaction that is subject to the control of the District government, and that is related to an employment condition, as provided in § 1636. This definition does not include adverse actions resulting in removals, suspension of ten (10) days or more, reductions in grade, or enforced leave actions that last ten (10) days or more; reductions in force; or classification matters, nor is it intended to restrict matters that may be subject to a negotiated grievance and arbitration procedure in a collective bargaining agreement between the District and a labor organization representing employees.

Summary removal – an action taken to immediately separate an employee pursuant to § 1616.

Summary suspension – an action to immediately suspend an employee pursuant to § 1615.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. TT04-1, IN THE MATTER OF THE APPLICATION OF
VERIZON-WASHINGTON, D.C., INC., FOR AUTHORITY TO AMEND THE LOCAL
EXCHANGE SERVICES TARIFF, P.S.C. - D.C. -No. 203

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of its final rulemaking action, taken in Order No. 13257 (July 29, 2004), to approve the tariff application of Verizon Washington, D.C. Inc. ("Verizon DC")¹ to amend the following tariff pages:

LOCAL EXCHANGE SERVICES TARIFF, P.S.C.-D.C.-No. 203
Section 31, 2nd Revised Page 4

2. Through this tariff filing Verizon DC sought to increase the current rates for both the Local Package Standard and Local Package by \$1.00 each.² This proposed tariff affects only residential customers in the District. Verizon DC also asserted that this tariff filing was submitted in compliance with Price Cap Plan 2002.³

3. A Notice of Proposed Rulemaking inviting public comment was issued on April 30, 2004.⁴ Seven Verizon DC customers filed comments opposing the increase in rates, each generally stating that Verizon DC's rates were already too high, competition should be driving rates down, and because Verizon DC's quality of service has deteriorated over time.⁵ Subsequently, the Commission, in Order No. 13257, approved Verizon DC's tariff application, finding that, because the proposed rate increases were below 10 percent annually for basic

¹ *Formal Case No. TT04-1, In the Matter of the Application of Verizon Washington, DC, Inc. For Authority to Amend the Local Exchange Services Tariff, P.S.C.-D.C.-No. 203*, Letter from J. Henry Ambrose, Vice President for Regulatory Matters of Verizon DC to Sanford M. Speight, Acting Commission Secretary, filed April 15, 2004 ("Application").

² *Id.*

³ *Formal Case No. 1005, In the Matter of Verizon Washington, D.C. Inc.'s Price Cap Plan 2002 for the Provision of Local Telecommunications Services in the District of Columbia*, Order No. 12368, rel. April 1, 2003.

⁴ 50 D.C. Reg. 4550-4551 (2004).

⁵ *See Formal Case No. TT04-1*: Comments of Grant F. Smith, filed April 30, 2004; Bret Schulte, filed May 5, 2004; Margaret R. Bennett, filed May 5, 2004; Walter Weldon Block, Jr., filed May 6, 2004; Millette Pauley, filed June 1, 2004; Charlene E. Scott, filed June 3, 2004; and Patricia B. Wood, filed July 8, 2004.

services and 15 percent annually for discretionary services, the application complied with Price Cap Plan 2002.⁶ This tariff modification becomes effective upon the publication date of this Notice of Final Rulemaking in the *D.C. Register*.

⁶ Order No. 13257 at 2; *see also* Price Cap Plan 2002 at §§ 3(a) (1), 3(a) (2), and 3(a) (3).