

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of emergency rulemaking action to adopt the following amendments to 3 DCMR Chapter 8, "Tabulation and Certification of Election Results."

The proposed amendments establish standards and procedures for conducting post-election manual audits of paper ballots.

In order for these amendments to be in place prior to the November 4, 2008 General Election, it was necessary for the Board to adopt the following emergency amendments to the rules. The Board took such action at a special meeting which took place on Wednesday, October 22, 2008, at which time the proposed amendments became effective.

The Board hereby gives notice of its intent to take final rulemaking action to adopt these amendments in no less than 30 days from the date of publication of this notice in the D.C. Register.

The emergency amendments to the rules will expire on Thursday, February 19, 2009, one hundred twenty (120) days after the emergency rulemaking takes effect, or upon publication of the Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments no later than thirty (30) days after the publication of this notice in the D.C. Register. Comments should be mailed to Kenneth J. McGhie, General Counsel, D.C. Board of Elections and Ethics, 441 4th Street, NW, Suite 270N, Washington, DC 20001 or e-mailed to ogc@dcboee.org. Copies of the proposed rules may be obtained at cost from the Board at the same address between the hours of 9:00 a.m. and 4:45 p.m.

Amend Chapter 8, "Tabulation and Certification of Election Results," as follows:

1) By adding a new Section to read as follows:

"818 POST-ELECTION MANUAL AUDIT OF PAPER BALLOT MACHINES

818.1 After each Primary, General, and Special election in which a precinct-level vote-tabulation machine is used, the Board shall conduct a public manual (hand-count) audit of the paper ballots tabulated by at least five (5) percent of such machines during the election.

- 818.2 The manual audit shall entail counting the paper ballots cast on the machines selected for the audit and comparing the results of this count with the results shown by the results tape produced by the machine used to tabulate those paper ballots during the election.
- 818.3 The Board shall take appropriate measures to ensure that spoiled or defective ballots are not inadvertently tallied as valid ballots in the manual audit process.
- 818.4 The machines audited shall be selected on an entirely random basis such that each machine used in the election shall have an equal chance of being selected for the manual audit, except that:
- a) No less than five (5) percent of the machines used in the District shall be selected, and;
 - b) No less than one machine from each ward shall be selected.
- 818.5 The random machine selection event shall be announced no later than three (3) days after the election, but more than three (3) days in advance of the event and conducted in public view.
- 818.6 The manual audit shall be:
- a) Announced no later than three (3) days after the election, but more than three (3) days in advance of the event, and;
 - b) Conducted in public view such that members of the public are able to verify the tally, but are unable either to touch ballots and other official materials or to interfere in any way with the manual audit process.
- 818.7 The Board shall begin the manual audit as soon as practicable after the random machine selection event.
- 818.8 The contests subject to the manual audit, which shall be publicly selected at random by the Board, shall be, in all elections where there is at least one District-wide contest on the ballot, whether it involves an office or a ballot measure, at least one District-wide contest. If there is no District-wide contest in an election, the Board shall provide a process for selecting ward ballot items to adequately verify machine results.
- 818.9 The Board shall also conduct a manual audit of:
- a) The paper ballots cast in each contest that would be subject to an automatic recount pursuant to Section 815 of this chapter, and;

- b) The paper ballots cast in precincts where the difference between the number of voters (as indicated by the results tape) and the number of ballots cast (as indicated by the precinct ballot accounting form) is greater than the margin of victory in a particular contest.
- 818.10 Individuals performing the manual audit shall:
- a) Not be assigned to tally the results from a precinct in which that individual served as a poll worker on Election Day, and;
 - b) Not at any time before or during the manual audit be informed of the corresponding machine tally results.
- 818.11 Individuals performing the manual audit shall be assembled into teams of at least four individuals such that there will be one person to call the ballot result, at least two persons to tally the ballot result, and at least one person to witness the process.
- 818.12 Each manual audit team shall be provided with a set of paper ballots associated with a machine that has been selected for the manual audit and advised as to which contest they are responsible for auditing.
- 818.13 The talliers shall announce the end of each twenty (20)-vote increment, at which point the team shall check for errors in the tally. If a tallying error is found, the tallying process shall be rolled back to the last point of agreement.
- 818.14 If the initial manual audit reveals a discrepancy between the machine result and the manual audit tally result which yields an error rate greater than one and one-half (1½) percent, and such discrepancy is not attributed to marking errors, a recount shall be conducted by the same team.
- 818.15 If the second manual audit confirms the discrepancy described in subsection 818.14, the ballots cast using the machine at the precinct one higher in number than the one whose machine(s) was the subject of the initial manual audit shall be subjected to a manual audit.
- 818.16 If the additional precinct manual audit confirms the discrepancy described in subsection 818.14, the ballots cast on all voting machines in the ward at issue shall be subjected to a manual audit.
- 818.17 The results derived from the manual audits shall be considered the true and correct results of the election contests at issue.

- 818.18 All machines found to have an error rate greater than that referenced in subsection 818.14 shall be examined and repaired before they may be used in future elections.
- 818.19 All software errors detected as a result of the manual audit shall be investigated and corrected before any machine that used such software in that election may be used in future elections.
- 818.20 The Board shall include a report, which shall be made public, on the results of the manual audit in the certification of the official election results. Such report shall:
- a) Identify any discrepancies between the machine count and the manual tally, and
 - b) A description of how each of these discrepancies was resolved.”

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director, D.C. Department of Human Resources (DCHR), with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with sections 2401 through 2409 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 § 1-624.01 *et seq.*) (2006 Repl.), hereby gives notice of the adoption of the following emergency rules. These rules amend Chapter 24, Reductions In Force, of Title 6 of the District of Columbia Municipal Regulations (DCMR), on an emergency basis, for the main purpose of adding new sections 2429.2 and 2429.3 to the chapter, to provide that the DCHR may establish and maintain displaced employee program lists for priority placement referral of employees displaced by reductions in force (RIFs) conducted in subordinate agencies with personnel authority, and that for any such displaced employee program list established and maintained by the DCHR. As a personnel authority, the DCHR is responsible for establishing and maintaining displaced employee program lists for priority placement referral of displaced employees to all subordinate agencies under its administrative control. Because the administrative control of a subordinate agency with personnel authority is limited to the particular agency, such an agency cannot establish or maintain a displaced employee program list for priority placement referral of its displaced employees to other agencies. Such a limitation nullifies the entitlement for priority placement referral of affected agency employees. Thus, there is a need to amend section 2429 of the regulations to provide that the DCHR may establish and maintain displaced employee program lists for subordinate agencies with personnel authority. The other changes to the chapter are as follows: section 2429.2 was renumbered as 2429.3 and amended; section 2429.3 was renumbered as 2429.4; section 2429.4 was renumbered as 2429.5 and amended; sections 2429.5 and 2429.6 were renumbered as 2429.6 and 2429.7, respectively; sections 2431.1 and 2431.2 were amended; a new section 2431.3 on the total severance pay to which an employee is entitled was added; and the definition of the term "*creditable service*" was added to section 2499 of the chapter. Because of a RIF conducted in December of 2007 in a subordinate agency with personnel authority, and the need to establish the displaced employee program list for priority placement referral of the affected agency employees, the utilization of emergency rulemaking is the only means available to immediately authorize the DCHR to provide this service. Therefore, to ensure the welfare of the effected employees and the general public, action was taken on October 16, 2008 to adopt the following rules on an emergency basis effective October 16, 2008. These rules will remain in effect for up to one hundred twenty (120) days from October 16, 2008, unless earlier superseded by another rulemaking notice.

The Director, DCHR, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with sections 2401 through 2409 of the CMPA (D.C. Law 2-139; D.C. Official Code § 1-624.01 *et seq.*) (2006 Repl.), hereby gives notice of the intent to adopt the following proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. These rules would amend Chapter 24, Reductions In Force, of Title 6 of the

DCMR, for the main purpose of adding new sections 2429.2 and 2429.3 to the chapter, to provide that the DCHR may establish and maintain displaced employee program lists for priority placement referral of employees displaced by RIFs conducted in subordinate agencies with personnel authority. The other changes to the chapter are as follows: section 2429.2 was renumbered as 2429.3 and amended; section 2429.3 was renumbered as 2429.4; section 2429.4 was renumbered as 2429.5 and amended; sections 2429.5 and 2429.6 were renumbered as 2429.6 and 2429.7, respectively; sections 2431.1 and 2431.2 were amended; a new section 2431.3 on the total severance pay to which an employee is entitled was added; and the definition of the term "*creditable service*" was added to section 2499 of the chapter. Upon adoption, these rules will amend Chapter 24, Reductions In Force, of Title 6 of the DCMR, published at 32 DCR 1182 (March 1, 1985) and amended at 37 DCR 7119 (November 9, 1990), 38 DCR 6158 (October 4, 1991), 40 DCR 2114 (March 26, 1993), 47 DCR 2425 (April 7, 2000), and 50 DCR 10573 (December 12, 2003).

CHAPTER 24

REDUCTIONS IN FORCE

Chapter 24 of the D.C. Personnel Regulations is amended as follows:

Section 2429 is amended as follows:

2429 DISPLACED EMPLOYEE PROGRAM

2429.1 Each personnel authority shall establish and maintain a displaced employee program list for priority placement referral of its displaced employees to all agencies or any other identifiable organizational components within the personnel authority under its administrative control.

New section 2429.2 is added to read as follows:

2429.2 The D.C. Department of Human Resources (DCHR) may establish and maintain a displaced employee program list for priority referral of employees displaced by reduction in force in any subordinate agency with personnel authority. Subordinate agencies with personnel authority include the Child and Family Services Agency, the Department of Mental Health, and the Department of Disability Services.

Section 2429.2 is renumbered as 2429.3 and amended to read as follows:

2429.3 A group I employee's name shall remain on the displaced employee program list for two (2) years, and a group II employee's for one (1) year, from the date he or she was separated from his or her competitive level.

Section 2429.3 is renumbered as 2429.4:

2429.4 The displaced employee program shall be separate and distinct from the Agency Reemployment Priority Program in sections 2427 and 2428 of this chapter.

Section 2429.4 is renumbered as 2429.5 and amended to read as follows:

2429.5 The displaced employee program list shall consist of the following:

- (a) Displaced employees in tenure groups I or II who were separated from their positions by reduction in force; and
- (b) Each displaced employee in tenure group I or II who fully recovers from a compensable injury, as defined in sections 2301 through 2347 of the CMPA (D.C. Official Code § 1-623.01 *et seq.*) (2006 Repl.), more than one (1) year after the date compensation began, and who applies for reappointment within thirty (30) days of the date of cessation of compensation.

Sections 2429.5 and 2429.6 are renumbered as 2429.6 and 2429.7, respectively:

2429.6 The employee's name shall be entered on the displaced employee program list for all positions for which qualified as follows:

- (a) At his or her grade level at the time of separation; and
- (b) At any lower grade acceptable to the employee.

2429.7 The personnel authority may delete an employee's name from the list when he or she declines a non-temporary position, with a tour of duty similar to the position from which separated, that is at the same grade level from which he or she was separated or at any lower grade acceptable to the employee.

Section 2431 is amended as follows:

2431 SEVERANCE PAY

Sections 2431.1 and 2431.2 are amended to read as follows:

2431.1 An employee separated by reduction in force pursuant to this chapter shall be entitled to severance pay not to exceed twenty-six (26) weeks' pay at the rate received immediately before the separation, computed in accordance with the provisions of section 1148 of Chapter 11 of these regulations and as provided

in section 2431.2 of this section, on the basis of the employee's basic pay, length of creditable service, and age, as follows:

- (a) To a Career Service employee who is involuntarily separated in accordance with this chapter;
- (b) To an attorney in the Legal Service, other than an attorney in the Senior

Executive Attorney Service, who is involuntarily separated in accordance with this chapter; or

- (c) To an attorney in the Excepted Service who is involuntarily separated in accordance with this chapter

2431.2 In computing an employee's creditable service for severance pay purposes, additional service credit shall be provided as follows:

- (a) Four (4) years for an employee who qualifies for veterans preference as provided in section 2417 of this chapter;
- (b) Three (3) years for an employee who qualifies for residency preference, as follows:
 - (1) Each competing employee who is a bona fide resident of the District of Columbia;
 - (2) Each competing employee who is not a resident of the District of Columbia, but who was hired prior to January 1, 1980 and has continued employment without a break in service of one (1) workday or more since that date; and
 - (3) Each competing employee who is not a resident of the District of Columbia, but who was a former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, pursuant to the provisions of section 7 of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (P.L. 98-621; 98 Stat. 3376; 24 U.S.C. section 225e (b)), and who has continued employment without a break in service of one (1) workday or more since that date.

A new section 2431.3 is added to read as follows:

2431.3 Total severance pay of an employee described in section 2431.1 of this section shall be limited to not more than twenty-six (26) calendar weeks during the employee's total years of service in the District government, except that severance pay totaling twenty-six (26) weeks or less received prior to October 21, 1998 shall not be counted for this purpose.

Section 2499 is amended to add the definition of the term "creditable service:"

Creditable service – all service in the employ of the District or federal government that is creditable for purposes of the employee's retirement system.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4th Street, N.W., Suite 300 South, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.