

Chapter 19e Administrative Law Judges

67-19e-101 Title.

This chapter is known as "Administrative Law Judges."

Enacted by Chapter 165, 2013 General Session

67-19e-102 Definitions.

In addition to the definitions found in Section 67-19-3, the following definitions apply to this chapter:

- (1)
 - (a) "Administrative law judge" means an individual who is employed or contracted by a state agency who:
 - (i) presides over or conducts formal administrative hearings on behalf of an agency;
 - (ii) has the power to administer oaths, rule on the admissibility of evidence, take testimony, evaluate evidence, and make determinations of fact; and
 - (iii) issues written orders, rulings, or final decisions on behalf of an agency.
 - (b) "Administrative law judge" does not mean:
 - (i) an individual who reviews an order or ruling of an administrative law judge; or
 - (ii) the executive director of a state agency.
- (2) "Committee" means the Administrative Law Judge Conduct Committee created in Section 67-19e-108.
- (3) "Department" means the Department of Human Resource Management created in Section 67-19-5.
- (4) "Executive director" means the executive director of the department.

Amended by Chapter 237, 2016 General Session

67-19e-103 Administrative law judges -- Applicability -- Destruction of evidence.

- (1)
 - (a) Except as provided in Subsections (1)(b) and (2), the provisions of this chapter apply to an administrative law judge who conducts formal adjudicative proceedings.
 - (b) Except as provided in Subsection (2), the provisions of this chapter do not apply to an administrative law judge who is employed by or contracts with:
 - (i) the Board of Pardons and Parole;
 - (ii) the Department of Corrections; or
 - (iii) the State Tax Commission.
- (2) The code of conduct established by the department under Subsection 67-19e-104(4) applies to all administrative law judges.
- (3) An administrative law judge who tampers with or destroys evidence submitted to the administrative law judge is subject to the provisions of Section 76-8-510.5. This section does not apply to documents destroyed in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 237, 2016 General Session

67-19e-104 Rulemaking authority.

The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (1) establishing minimum performance standards for all administrative law judges;
- (2) providing procedures for filing, addressing, and reviewing complaints against administrative law judges;
- (3) providing standards for complaints against administrative law judges;
- (4) promulgating a code of conduct for all administrative law judges in all state agencies; and
- (5) establishing a procedural fairness training program as described in Section 67-19e-109.

Amended by Chapter 237, 2016 General Session

67-19e-104.5 Hiring of administrative law judges.

- (1) Except as provided in Subsection (6), each administrative law judge hired on or after May 10, 2016, shall be hired in accordance with this section.
- (2) If an applicant for an administrative law judge position is selected for an interview in accordance with applicable law and department rule, the agency shall interview the applicant by means of a hiring panel.
- (3) The hiring panel described in Subsection (2) shall consist of:
 - (a) the head of the hiring agency;
 - (b) the head of another agency, appointed by the executive director; and
 - (c) the executive director.
- (4) Each individual described in Subsection (3) may designate another individual to serve on the hiring panel on the individual's behalf.
- (5) After the hiring panel completes the interviews for an administrative law judge position:
 - (a) the hiring panel shall select the top three applicants for the administrative law judge position; and
 - (b) the head of the hiring agency shall:
 - (i) consider any opinions or feedback from the other members of the hiring panel with respect to the top three applicants; and
 - (ii)
 - (A) hire an applicant from the top three applicants to fill the administrative law judge position;
 - or
 - (B) decide not to hire any of the top three applicants and restart the hiring process to fill the administrative law judge position.
- (6) This section does not apply to an administrative law judge who is appointed by the governor.

Enacted by Chapter 237, 2016 General Session

67-19e-105 Performance evaluation of administrative law judges.

- (1) Beginning January 1, 2014, the department shall prepare a performance evaluation for each administrative law judge contracted or employed by a state agency.
- (2) The performance evaluation for an administrative law judge shall include:
 - (a) the results of the administrative law judge's performance evaluations conducted by the employing agency since the administrative law judge's last performance evaluation conducted by the department in accordance with the performance evaluation procedure for the agency;
 - (b) information from the employing agency concerning the administrative law judge's compliance with minimum performance standards;

- (c) the administrative law judge's disciplinary record, if any;
 - (d) the results of any performance surveys conducted since the administrative law judge's last performance review conducted by the department; and
 - (e) any other factor that the department considers relevant to evaluating the administrative law judge's performance.
- (3) If an administrative law judge fails to meet the minimum performance standards the department shall provide a copy of the performance evaluation and survey to the employing agency.
- (4) The department shall conduct performance reviews every four years for administrative law judges contracted or employed by an agency.

Enacted by Chapter 165, 2013 General Session

67-19e-106 Performance surveys.

- (1) For administrative law judges contracted or employed before July 1, 2013, performance surveys shall be conducted initially at either the two-, three-, or four-year mark beginning January 1, 2014. By July 1, 2018, all administrative law judges shall be on a four-year staggered cycle for performance evaluations.
- (2) The performance survey shall include as respondents a sample of each of the following groups as applicable:
- (a) attorneys who have appeared before the administrative law judge as counsel; and
 - (b) staff who have worked with the administrative law judge.
- (3) The department may include an additional classification of respondents if the department:
- (a) considers a survey of that classification of respondents helpful to the department; and
 - (b) establishes the additional classification of respondents by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) A survey response is anonymous, including any comment included with a survey response.
- (5) If the department provides any information to an administrative law judge or the committee, the information shall be provided in such a way as to protect the confidentiality of a survey respondent.
- (6) If the department establishes an additional classification, in accordance with Subsection (3), a survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appeared before the administrative law judge is closed, exclusive of any appeal. Staff and attorneys may be surveyed at any time during the survey period.
- (7) The performance survey shall include questions relating to whether the administrative law judge's behavior furthers the following elements of procedural fairness:
- (a) neutrality, including:
 - (i) consistent and equal treatment of the individuals who appear before the administrative law judge;
 - (ii) concern for the individual needs of the individuals who appear before the administrative law judge; and
 - (iii) careful deliberation;
 - (b) respectful treatment of others; and
 - (c) providing individuals a voice and opportunity to be heard.
- (8) The performance survey may include questions concerning an administrative law judge's:
- (a) legal ability, including the following:
 - (i) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;
 - (ii) attentiveness to factual and legal issues before the administrative law judge;

- (iii) adherence to precedent and ability to clearly explain departures from precedent;
- (iv) grasp of the practical impact on the parties of the administrative law judge's rulings, including the effect of delay and increased litigation expense;
- (v) ability to write clear opinions and decisions; and
- (vi) ability to clearly explain the legal basis for opinions;
- (b) temperament and integrity, including the following:
 - (i) demonstration of courtesy toward attorneys, staff, and others in the administrative law judge's department;
 - (ii) maintenance of decorum in the courtroom;
 - (iii) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the administrative law judge system;
 - (iv) preparedness for oral argument;
 - (v) avoidance of impropriety or the appearance of impropriety;
 - (vi) display of fairness and impartiality toward all parties; and
 - (vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions; and
- (c) administrative performance, including the following:
 - (i) management of workload;
 - (ii) sharing proportionally the workload within the department; and
 - (iii) issuance of opinions and orders without unnecessary delay.
- (9) If the department determines that a certain survey question or category of questions is not appropriate for a respondent group, the department may omit that question or category of questions from the survey provided to that respondent group.
- (10)
 - (a) The survey shall allow respondents to indicate responses in a manner determined by the department, which shall be:
 - (i) on a numerical scale from one to five; or
 - (ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.
 - (b) To supplement the responses to questions on either a numerical scale or in the affirmative or negative, the department may allow respondents to provide written comments.
- (11) The department shall compile and make available to each administrative law judge that administrative law judge's survey results with each of the administrative law judge's performance evaluations.

Amended by Chapter 237, 2016 General Session

67-19e-107 Complaints.

- (1) A complaint against an administrative law judge shall be filed with the department.
- (2) Upon receipt of a complaint, the department shall conduct an investigation.
- (3) If the department's investigation determines that the complaint is frivolous or without merit, it may dismiss it without further action. A complaint that merely indicates disagreement, without further misconduct, with the administrative law judge's decision shall be treated as without merit.
- (4) The contents of all complaints and subsequent investigations are classified as protected under Title 63G, Chapter 2, Government Records Access and Management Act.

Enacted by Chapter 165, 2013 General Session

67-19e-108 Administrative Law Judge Conduct Committee.

- (1) There is created the Administrative Law Judge Conduct Committee to investigate, review, and hear complaints filed against administrative law judges.
- (2) The committee shall be composed of:
 - (a) the executive director, or the executive director's designee, as chair; and
 - (b) four executive directors, or their designees, of agencies that employ or contract with administrative law judges, to be selected by the executive director as needed.
- (3) The department shall provide staff for the committee as needed.

Amended by Chapter 237, 2016 General Session

67-19e-109 Procedure for review of complaint by conduct committee.

- (1) Upon a determination that a complaint requires further action, the executive director shall select four executive directors or their designees and convene the committee. The executive director of the agency that employs or contracts with the administrative law judge who is the subject of the complaint may not be a member of the committee.
- (2) The department shall provide a copy of the complaint, along with the results of the department's investigation, to the committee and the administrative law judge who is the subject of the complaint. If the committee directs, a copy of the complaint and investigation may also be provided to the attorney general.
- (3) The committee shall allow an administrative law judge who is the subject of a complaint to appear and speak at any committee meeting, except a closed meeting, during which the committee is deliberating the complaint.
- (4) The committee may meet in a closed meeting to discuss a complaint against an administrative law judge by complying with Title 52, Chapter 4, Open and Public Meetings Act.
- (5) After deliberation and discussion of the complaint and all information provided, the committee shall provide a report, with a recommendation, to the agency. The recommendation shall include:
 - (a) a brief description of the complaint and results of the department's investigation;
 - (b) the committee's findings; and
 - (c) a recommendation from the committee whether action should be taken against the administrative law judge.
- (6) Actions recommended by the committee may include no action, disciplinary action, termination, or any other action an employer may take against an employee.
- (7) The record of an individual committee member's vote on recommended actions against an administrative law judge is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

Enacted by Chapter 165, 2013 General Session

67-19e-110 Required training.

- (1) Each year that an administrative law judge receives a performance evaluation conducted by the department under this chapter, the administrative law judge shall complete the procedural fairness training program described in this section.
- (2) The department shall establish a procedural fairness training program that includes training on how an administrative law judge's actions and behavior influence others' perceptions of the fairness of the adjudicative process.

- (3) The procedural fairness training program shall include discussion of the following elements of procedural fairness:
 - (a) neutrality, including:
 - (i) consistent and equal treatment of the individuals who appear before the administrative law judge;
 - (ii) concern for the individual needs of the individuals who appear before the administrative law judge; and
 - (iii) unhurried and careful deliberation;
 - (b) respectful treatment of others; and
 - (c) providing individuals a voice and opportunity to be heard.
- (4) The department may contract with a public or private person to develop or provide the procedural fairness training program.

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