

**10-3-1106 Discharge, suspension without pay, or involuntary transfer -- Appeals -- Board -- Procedure.**

- (1) An employee to which Section 10-3-1105 applies may not be discharged, suspended without pay, or involuntarily transferred to a position with less remuneration:
  - (a) because of the employee's politics or religious belief; or
  - (b) incident to, or through changes, either in the elective officers, governing body, or heads of departments.
- (2)
  - (a) If an employee other than an employee described in Subsection 10-3-1105(2) is discharged, suspended for more than two days without pay, or involuntarily transferred from one position to another with less remuneration for any disciplinary reason, the employee may, subject to Subsection (2)(b), appeal the final decision to discharge, suspend without pay, or involuntarily transfer to an appeal board or hearing officer established under Subsection (7).
  - (b) If the municipality provides an internal grievance procedure, the employee shall exhaust the employee's rights under that grievance procedure before appealing to the appeal board or hearing officer.
- (3)
  - (a) Each appeal under Subsection (2) shall be taken by filing written notice of the appeal with the municipal recorder in accordance with procedures established by a municipality within 10 calendar days after:
    - (i) if the municipality provides an internal grievance procedure, the employee receives notice of the final disposition of the municipality's internal grievance procedure; or
    - (ii) if the municipality does not provide an internal grievance procedure, the discharge, suspension, or involuntary transfer.
  - (b)
    - (i) Upon the filing of an appeal under Subsection (3)(a), the municipal recorder shall refer a copy of a properly filed appeal to the appeal board or hearing officer described in Subsection (7).
    - (ii) Upon receipt of the referral from the municipal recorder, the appeal board or hearing officer shall schedule a hearing to take and receive evidence and fully hear and determine the matter which relates to the reason for the discharge, suspension, or transfer.
- (4)
  - (a) An employee who is the subject of the discharge, suspension, or transfer may:
    - (i) appear in person and be represented by counsel;
    - (ii) have a hearing open to the public;
    - (iii) confront the witness whose testimony is to be considered; and
    - (iv) examine the evidence to be considered by the appeal board.
  - (b) An employee or the municipality may request the hearing described in Subsection (4)(a)(ii).
- (5)
  - (a)
    - (i) A decision of the appeal board shall be by secret ballot.
    - (ii) The appeal board or the hearing officer shall certify a decision by the appeal board or hearing officer, respectively, with the recorder no later than 15 days after the day on which the hearing is held, except as provided in Subsection (5)(a)(iii).
    - (iii) For good cause, the appeal board or hearing officer may extend the 15-day period under Subsection (5)(a)(ii) to a maximum of 60 calendar days, if the employee and municipality both consent.

- (b) If the appeal board or hearing officer finds in favor of the employee, the appeal board or hearing officer shall provide that the employee shall receive:
  - (i) the employee's salary for the period of time during which the employee is discharged or suspended without pay less any amounts the employee earned from other employment during this period of time; or
  - (ii) any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.
- (6)
  - (a) A final action or order of the appeal board or hearing officer may be reviewed by the Court of Appeals by filing with that court a petition for review.
  - (b) A petition under Subsection (6)(a) shall be filed within 30 days after the issuance of the final action or order of the appeal board or hearing officer.
  - (c) The Court of Appeals' review shall be:
    - (i) on the record of the appeal board or hearing officer; and
    - (ii) for the purpose of determining if the appeal board or hearing officer abused its discretion or exceeded its authority.
- (7)
  - (a) The method and manner of choosing a hearing officer or the members of the appeal board, the number of members, the designation of a hearing officer's or appeal board member's term of office, and the procedure for conducting an appeal and the standard of review shall be prescribed by the governing body of each municipality by ordinance.
  - (b) For a municipality operating under a form of government other than a council-mayor form under Chapter 3b, Part 2, Council-Mayor Form of Municipal Government, an ordinance adopted under Subsection (7)(a) may provide that the governing body of the municipality shall serve as the appeal board.
- (8) This section does not apply to an employee:
  - (a) described in Subsection 10-3-1105(2); or
  - (b) discharged or transferred to a position with less remuneration if the discharge or transfer is the result of a layoff, reorganization, or other non-disciplinary reason.

Amended by Chapter 321, 2012 General Session