

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**AN ORDINANCE** repealing sections 705., 710., 721., 723., 751., 7505., 7520., 7530., 7531., 7532., 7537., and 7540., Jackson County Code, 1984, relating to County personnel and the Merit System Commission, and enacting, in lieu thereof, twelve new sections relating to the same subject.

**ORDINANCE #4305**, April 18, 2011

**INTRODUCED BY** Scott Burnett, County Legislator

WHEREAS, the 2010 Jackson County Charter, adopted by the County's voters in August 2010, changed several of the previous charter's provisions governing County personnel and the Merit System Commission; and,

WHEREAS, in view of the 2010 Charter's adoption, certain revisions to the County Code provisions governing County personnel and the Merit System Commission are necessary to ensure that the code and Charter are consistent; and,

WHEREAS, these code revisions are in the best interests of the health, welfare, and safety of the citizens of Jackson County; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, MO as follows:

Section A. Enacting Clause. Sections 705., 710., 721., 723., 751., 7505., 7520., 7530., 7531., 7532., 7537., and 7540., Jackson County Code, 1984, are hereby repealed, and

twelve new sections enacted in lieu thereof, to be known as sections 705., 710., 721., 723., 751., 7505., 7520., 7530., 7531., 7532., 7531., and 7540., to read as follows:

705. Equal Employment Opportunity.

It is the policy of Jackson County to hire well qualified persons and to retain them as employees without discrimination because of race, color, [sex] gender, age, creed or religion, ancestry or national origin, [handicap] disability, [lawful] political activity or lack of political activity, [or] union or nonunion membership, pregnancy status, sexual orientation, gender identity, marital status, familial status, veterans status, or membership in any class protected under federal or state law. All aspects of personnel administration including hiring, working conditions, employment benefits and privileges, compensation, training, promotions, transfers, terminations, and recalls shall be made pursuant to this policy of equal opportunity.

710. Definitions.

As used in this chapter, the following words and phrases have the following meanings unless otherwise clearly indicated in the text.

710.1 Appointing Authority.

Appointing authority means an elected official, charter officer, department head, director or the designee of that person.

710.2 Commission.

Commission means the Merit System Commission.

710.3 Continuous County Service.

Continuous county service means employment with Jackson County without interruption except for authorized leaves of absence.

710.4 Full Time Employee.

Full time employee means an employee who regularly works forty (40) hours per week.

710.5 Merit Employee.

Merit employee means any county employee not exempted by the Jackson County charter or by the merit ordinances.

710.6 Nonmerit Employee.

Nonmerit employee means an employee excluded from the merit system by the Jackson County charter or by ordinance.

710.7 Part Time Employee.

Part time employee means an employee who regularly works less than forty (40)

hours per week or less than four (4) weeks a month.

710.8 Permanent Employee.

Permanent employee means an employee who has completed [a six (6) month] the applicable probationary period for his or her position.

710.9 Probationary Employee.

Probationary employee means a merit employee during [first six (6) months] the probationary period of county employment, as further defined under section 723. of this chapter.

710.10 Seasonal Employee.

Seasonal employee means a temporary employee who works in county service within a particular season of the year and may regularly work from year to year.

710.11 Significant Act.

Significant act means any act concerning an employee which in any way adversely affects any aspect of the employment of that person deemed significant by the Merit System Commission. This shall include, but is not limited to:

a. Dismissal.

Dismissal;

b. Demotion.

Demotion;

c. Lay offs.

Lay offs;

d. Termination or Adjustment of Benefits.

Termination or reduction of any benefit or allowance of an employee;

e. Reclassification to Lower Grade.

Reclassification of a position so as to place in a low paygrade;

f. Reclassification Resulting in Ineligibility.

Reclassification of a position so as to make the present holder ineligible to retain it;

g. Transfer Resulting in Hardship.

Transfer of an employee which causes that employee a hardship by reason of the geographic location of the new position of that employee;

h. Detrimental to Health and Safety of Employee.

Any act which may have a detrimental effect on the health and safety of the employee as a result of a change in working conditions;

i. Other Acts.

Any other act having an effect of significantly reducing the practicability of any employee remaining in the county service or of adversely affecting the relationship between the effective compensation of an employee and the relative difficulty of the work of that employee;

j. Construction of Definition.

Where any doubt arises concerning the applicability of this definition, it shall be constructed in favor of providing the employee with a remedy before the Merit System Commission.

710.12] Special Fund Employee.

Special fund employee means an employee funded by a special fund provided by a grant of any other governmental entity or by any foundation or from any other source other than county revenues.

710.1[3]2 Temporary Employee.

Temporary employee means an employee working in a position for a defined period

of time not to exceed six (6) months.

721. Dismissals, Lay-offs, Discipline.

The appointing authority may discipline, lay-off, or dismiss an employee for any reason not prohibited by ordinance or the personnel rules.

721.1 Responsibility.

Appointing authorities shall be responsible for the dismissal, lay-off, and discipline of merit employees subject to the conditions of this chapter.

721.2 Eligibility for Rehire.

An appointing authority, with the approval of the Director of Human Resources, may designate a voluntarily or involuntarily terminated employee as ineligible for rehire. In the event of such a designation, such terminated employee shall not be eligible for subsequent county employment.

723. Probation, Employees.

The following apply to the county employees subject to probation.

723.1 Duration.

Probationary periods are as follows:

a. Merit Employees.

Unless another provision of this section fixes a different period, [A]all full-time [and part-time] merit employees shall serve a six (6) month probationary period, commencing on the date of employment in a merit position.

b. Sheriff's Deputies.

The probationary period for Sheriff's deputies shall be one (1) year following the completion of training.

c. Park Rangers.

The probationary period for park rangers shall be ~~six (6) months~~ one year following the completion of training.

d. Promotional Probation.

If a permanent merit employee is promoted to a higher classification, that employee shall serve a three (3) month probationary period commencing on the effective date of the promotion.

723.2 Actions Affecting Probationary Employees.

The following actions may be taken during probation:



a. Merit Employees.

Merit employees may be dismissed during the probationary period for any reason except for race, color, [sex] gender, age, creed or religion, ancestry or national origin, [handicap] disability, lawful political activity or lack of political activity, [or] union or nonunion membership, pregnancy status, sexual orientation, gender identity, marital status, familial status, veteran status, or membership in any class protected under federal or state law.

b. Promoted Merit Employees.

If during the probationary period of a permanent merit employee promoted to a higher classification, the appointing authority subsequently determines that the promoted merit employee is unable to adequately perform the duties of the promoted position, the employee shall be returned to his former position or an equivalent position at the previous salary level.

723.3 Special Fund Employees.

Special fund employees shall have the same rights and be subject to the same rules as merit employees.

a. Excluded by Charter.

This chapter shall not apply to any special fund employees who would be excluded by the Jackson County Charter and the merit system provisions.

b. Excluded by Terms of Grant.

This chapter shall otherwise apply unless the terms of the grant funding a position prohibits the application of this chapter.

723.4 Dismissal, Review by Director of Human Resources.

The Human Resources Director shall review all dismissals made during the probationary period.

a. Reinstatement.

If warranted, the Human Resources Director may, in his or her discretion, seek reinstatement of the employee or recommend the employee for reemployment in another department.

b. Probationary Period.

Probationary merit employees who are reinstated or reemployed after separation shall begin a new probationary period.

c. No Compensation.

Probationary merit employees who are reinstated or reemployed after separation shall not be compensated for the time lost by separation.

723.5 Appeals During Probation.

The following apply to appeals during the probationary period.

a. Merit Employees.

The dismissal of a probationary merit employee shall not be subject to review by the Merit System Commission.

b. Promoted Permanent Employee.

A promoted permanent employee may not appeal the decision by the appointing authority to return the promoted employee to his former position or its equivalent to the Merit System Commission unless the basis for this decision was on account of race, creed, color, religion, national origin, [handicap] disability, [sex] gender, ancestry, political activity or the lack of political activity, union membership or nonmembership, pregnancy status, sexual orientation, gender identity, marital status, familial status, veteran status, or membership in any other class protected under federal or state law.

c. Probationary Employees.

Probationary employees are not entitled to appeal any matter to the Merit Commission.

751. Human Resources Director Removal.

The County Executive may [not] remove the Human Resources Director [without first obtaining the approval of the Merit System Commission] for cause.

[751.1 Time for Commission to Meet.

The Merit System Commission shall meet within fifteen (15) days from the receipt of the notice from the County Executive to remove the Personnel Director.

751.2 Action by Commission.

The Merit System Commission shall either approve or disapprove the removal.]

7505. Merit System Commission, Powers and Duties.

The Merit System Commission shall have the following powers and duties:

7505.1 Recommend Policy.

The Commission [shall automatically] may recommend to the County Legislature and the County Executive policies for the operation of the merit system. [All recommendations shall be in writing and filed with the Clerk of the County Legislature and with the County Executive.]

7505.2 Hold Regular Meetings.

The Commission shall meet at least [once a month] quarterly at a regularly scheduled time.

7505.3 Annual Report to Legislature and Executive.

The Commission shall make an annual report to the County Legislature and County Executive on the status of the merit system on or before the first of June of each year.

7505.4 Other Reports.

The Commission shall make other reports as deemed necessary by the Commission, County Executive or County Legislature.

7505.5 Review [Significant Act] Certain Disciplinary Actions.

Upon request by an affected employee, the Commission shall review any [significant act affecting the employment] demotion, termination, suspension, or budgetary layoff of any merit [system] employee other than probationary employees, to determine if the act was [taken because] the result of discrimination based on the race, creed, color, religion, national origin, gender, age, ancestry, disability, political activity or lack of political activity, union membership or nonmembership, pregnancy status, sexual orientation, gender identity, [or] marital status, familial status, veteran status, or membership in any other class protected

under federal or state law of the employee or was otherwise without cause, as that term is defined in the Personnel Rules.

7505.6 Promulgate Rules of Procedure.

The Commission shall promulgate reasonable rules of procedure for its meetings and hearings. To the maximum extent practicable, the Commission's rules shall provide for expedited hearings that minimize the need for prolonged oral testimony and encourage the presentation of evidence in a written format.

7520. Definitions.

The following words and phrases are defined as follows.

7520.1 Appointing Authority.

Appointing authority means an elected official, charter officer, division manager, department [head,] director or the designee of that person.

7520.2 Commission.

Commission means the Merit System Commission.

7520.3 Continuous County Service.

Continuous county service means employment with Jackson County without

interruption except for authorized leaves of absence.

7520.4 Full-Time Employee.

Full-time employee means any county employee not exempted by the charter or the merit ordinances.

7520.5] Merit Employee.

Merit employee means any county employee not exempted [by] from the merit system pursuant to the charter [or the merit ordinances].

7520.5 Non-Merit Employee.

Nonmerit employee means an employee excluded from the merit system by the Jackson County charter or by ordinance.

7520.6 Part-Time Employee.

Part-time employee means an employee who regularly works less than forty (40) hours per week or less than four (4) weeks per month.

7520.7 Permanent Employee.

Permanent employee means an employee who has completed [a six (6) month] the applicable probationary period for his or her position.

7520.8 Probationary Employee.

Probationary employee means a merit employee during his [first six (6) months of county employment,] or her probationary period as [further] defined in section 723. of this code.

7520.9 Seasonal Employee.

Seasonal employee means a temporary employee who works in county service within a particular season of the year and may regularly work from year to year.

7520.10 [Significant Act.

Significant act means any act concerning an employee which in any way adversely affects any aspect of the employment of that person deemed significant by the Merit System Commission. This shall include:

a. Dismissal.

Dismissal;

b. Demotion.

Demotion;

c. Layoffs.

Layoffs;



d. Written Reprimand or Written Warning.

Written reprimand or written warning;

e. Termination or Adjustment of Benefits.

Termination or reduction of any benefit or allowance of a specific employee;

f. Reclassification to Lower Grade.

Reclassification of a position so as place it in a lower paid grade;

g. Reclassification Resulting in Ineligibility.

Reclassification of a position so as to make the present holder ineligible to retain it;

h. Transfer Resulting in Hardship.

Transfer of an employee which causes that employee a hardship by reason of the geographic location of the new position of that employee;

i. Detrimental to Health and Safety of Employee.

Any act which may have a detrimental effect on the health and safety of a specific employee as a result of a change in that employee's working conditions;

j. Other Acts.

Any act having the effect of significantly reducing the practicability of any employee remaining in the county service or a adversely affecting the relationship between the effective compensation of the employee and the relative difficulty of the work of that employee, provided that an employee shall not have a right of review before the Merit System Commission of the result or contents of an employee evaluation or appraisal.

k. Construction of Definition.

Where any doubt arises concerning the applicability of this definition, it shall be construed in favor of providing the employee with a remedy before the Merit System Commission.

7520.10] Special-Fund Employee.

Special-fund employee means an employee funded by a special fund provided by a grant of any other governmental entity or [by any] foundation, or from any source other than county revenues.

APPEAL PROCEDURES

7530. Merit Appeal by Right.

The following may appeal to the Merit System Commission.

7530.1 Permanent Merit Employees.

Every permanent merit employee shall have the right of appeal to the Merit System Commission of any [significant act taken against that employee] demotion, termination, suspension, or budgetary layoff.

7531. Waiver of Appeal Rights.

The failure of an employee to file an appeal in the manner, form, and within the time required or the failure to prosecute an appeal before the Merit System Commission shall be a waiver of all appeal rights.

7532. Notice of [Significant Act] Appealable Disciplinary Action.

The appointing authority shall notify a merit employee in writing of any [significant act] demotion, termination, suspension, or budgetary layoff taken against that employee.

7532.1 Contents of Notice.

The notice shall include the following:

a. Name.

The name of employee;

b. Position.

The position of the employee with the county; and

c. Reason.

The reason of the action.

7532.2 Inform of Right of Appeal.

The notice shall also inform the employee of his right of appeal and the deadline for that appeal as set out in section 7533 of this chapter.

7532.3 Copy to Human Resources Director.

The appointing authority shall file a copy of the notice with the Human Resources Director.

7537. Hearing.

The following apply to Merit System Commission hearings.

7537.1 Quorum.

Three (3) commissioners at the hearing constitute a quorum.

7537.2 Place.

All hearings shall be held at either the Kansas City Courthouse or the Independence

Courthouse. However, for the convenience of the parties, the commission may decide to hold the hearing at the building where the complaining party was or is employed.

7537.3 Open to Public.

All hearings shall be open to the public.

7537.4 Human Resources Director.

The Human Resources Director shall attend all hearings.

7537.5 Representation.

Employees may be represented by counsel or other representative at the hearing.

7537.6 Attendance.

The appointing authority of the complaining employee, the Human Resources Director and other county employees as deemed necessary by the Merit System Commission shall attend the hearings and be available for testimony and other examination by the commission and the employee. The commission may request the attendance to the hearing of other parties who in its opinion may have pertinent information on the subject matter.

7537.7        Refusal to Attend.

Failure or refusal of any county employee to attend and testify when requested by the Merit System Commission shall be grounds for dismissal. No employee shall be terminated or be subject to any other action detrimental to the county employment of that employee by reason of the legitimate exercise of any privilege protected by the Constitution or laws of Missouri.

7537.8        Testimony.

Either party may offer testimony and information as may be necessary to his or her case. The Merit System Commission may limit or restrict any testimony and [information] other evidence that is not pertinent to the issue or is repetitious.

7537.9        Discovery.

There shall be no discovery in proceedings before the Merit System Commission except that which is explicitly authorized under the Commission's rules of procedure. Specifically, there shall be no discovery by way of depositions, written interrogatories, or requests for admissions.

7540.        Merit System Commission Actions.

The Merit System Commission may take the following actions:

7540.1 Budgetary Layoff.

In an appeal of a budget-reduction layoff, the Merit System Commission may reverse the decision of the appointing authority only where the commission finds that the choice of employees to be laid off was made on the basis of race, creed, color, religion, national origin, [sex] gender, age, ancestry, [handicap] disability, political activity or the lack of political activity, pregnancy status, sexual orientation, gender identity, marital status, familial status, veteran status, union membership or non-membership, or membership in any other class protected under federal or state law.

7540.2 Reinstatement or Recommended for Modified Discipline.

In an appeal of a demotion, suspension, or termination, [T]the Merit System Commission may reinstate an employee with or without back pay. The Commission shall not substitute other discipline in lieu of the demotion, suspension, or termination but may recommend the appointing authority consider an alternate or modified discipline. In any event and even without the recommendation of the Commission, the appointing authority shall retain the right to substitute alternate discipline for the demotion, suspension, or termination. In the event subsequent discipline is issued by the appointing authority and is either a demotion or suspension, the employee shall retain the right to file an appeal with the Merit System Commission within ten working days.

a. Computation of Back Pay.

Back pay, if awarded, shall be computed at the rate the employee earned at the time of suspension, demotion or dismissal including any increases received by the class of that employee during the period, and less any unemployment compensation payments, wages, or income received from other sources during that period of time.

b. Intent of Section.

It is the intent of this section that a reinstated employee be reimbursed for only the income that is actually lost by reason of any wrongful suspension, demotion, or dismissal, and that setoff of wages earned or other income shall not apply to income which was regularly received by the employee from other sources prior to the period in question.

c. Back-pay Disputes.

The Merit System Commission may continue or reopen an appeal hearing in order to resolve a back-pay dispute.

d. Documentation.

The Human Resources Director or the Merit System Commission may require the employee to furnish any documents necessary to determine whether income was received from other sources, or the amount of that

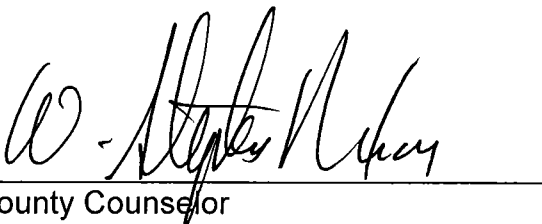


income, including copies of federal income tax returns, bank records, payroll-check stubs, or other documentation.

Effective Date: This Ordinance shall be effective immediately upon its signature by the County Executive.

APPROVED AS TO FORM:

  
Chief Deputy County Counselor

  
County Counselor

I hereby certify that the attached Ordinance, Ordinance #4305 introduced on April 18, 2011, was duly passed on May 2, 2011 by the Jackson County Legislature. In the votes thereon were as follows:

Yeas 8

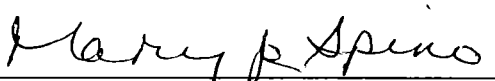
Nays 0

Abstaining 0

Absent 1

This Ordinance is hereby transmitted to the County Executive for his signature.

5-2-11  
Date

  
Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance #4305.

5/2/2011  
Date

  
Michael D. Sanders, County Executive