

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE repealing sections 7537., 7538., and 7540., Jackson County Code, 1984, relating to the Merit System Commission, and enacting, in lieu thereof, three new sections relating to the same subject.

ORDINANCE #4393, February 21, 2012

INTRODUCED BY Scott Burnett, County Legislator

WHEREAS, the adoption of the 2010 Jackson County Charter and other recent events have rendered desirable some modifications to the county code chapter governing the operation of the Merit System Commission; and,

WHEREAS, these modifications 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 Sections 7537., 7538., and 7540., Jackson County Code, 1984, are hereby repealed, and three new sections enacted in lieu thereof, to be known as sections 7537., 7538., and 7540., to read as follows:

7537. Hearing.

The following apply to Merit System Commission hearings.

7537.1 Quorum.

Three (3) commissioners at the hearing constitute a quorum. However, no hearing shall be conducted with only four Commissioners present. If the Chairman determines that less than the full membership of the Commission will be available to hear any appeal, the Chairman shall appoint a panel of three commissioners to hear the appeal.

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 part 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 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.

7538. Decision of Commission.

In each case, the appointing authority shall have the burden of proof to convince the Merit System Commission by a preponderance of the evidence that the action against the employee was taken for cause and/or was not taken for a prohibited reason, as further described in section 7505.5 of this chapter. All decisions of the Merit System Commission shall be final.

7538.1 Who Makes Decision.

All final decisions shall be rendered by a majority of the commissioners who are qualified to vote on the appeal.

a. Qualified to Vote.

A commission member is qualified to vote on a decision if the commission member has attended the entire hearing

7538.2 Decision in Writing.

The decision shall be rendered in writing, signed by the Chairman and agreed to by a majority of the commissioners who are qualified to vote on the appeal.

7538.3 Time to Render.

The decision shall be rendered within fourteen (14) days of the conclusion of the final hearing.

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, gender, age, ancestry, 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, 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] In reaching its decision on an appeal, if the Commission determines that cause exists for any disciplinary action against the employee and/or that the action taken against the employee was not for a prohibited, discriminatory reason, the Commission shall uphold the disciplinary action and shall not substitute its own judgment as to the degree of disciplinary action appropriate for the judgment of the appointing authority. However, the Commission in its decision 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.

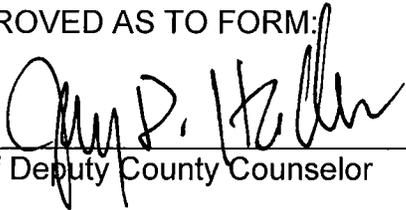
The Merit System Commission may continue or reopen an appeal hearing in order to resolve a back-pay dispute.

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 #4393 introduced on February 21, 2012, was duly passed on March 5, 2012 by the Jackson County Legislature. In the votes thereon were as follows:

Yeas 9

Nays 0

Abstaining 0

Absent 0

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

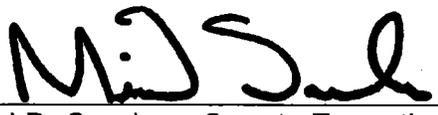
3.7.12
Date



Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance #4393.

3/7/2012
Date



Michael D. Sanders, County Executive