

TMHRA 2023 UPDATE

Basics of Civil Service

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DIRECTOR OF CIVIL SERVICE (143.012)

- ▶ Secretary to Commission
- ▶ Performs other work as directed by Commission
- ▶ Examples:
 - ▶ Handles details of testing
 - ▶ Entry-level and
 - ▶ Promotions
 - ▶ Coordinates arrangements for appeals to
 - ▶ Commission and
 - ▶ Hearing Examiner



APPOINTMENT OF FIRE AND POLICE CHIEFS (143.013)

- ▶ Appointed by City Manager
- ▶ Confirmed by City Council
- ▶ Police Chief
 - ▶ Certified at intermediate level
 - ▶ Served as bona fide law enforcement Officer for five (5) years
- ▶ Fire Chief
 - ▶ Certified at intermediate level
 - ▶ Served as fully-paid firefighter for five (5) years
- ▶ Removal as Chief
 - ▶ Right to hearing if originally appointed from the ranks
 - ▶ May be reinstated to prior rank



APPOINTMENT/REMOVAL OF ASSISTANT CHIEFS (143.014)

- ▶ Chief may appoint Assistant Chiefs
- ▶ 1983 Benchmark for Police calculation
- ▶ Fire Chief appoints
 - ▶ One (1) for 300 certified firefighters
 - ▶ Two (2) for 300-600 certified firefighters
 - ▶ Three (3) for more than 600 certified firefighters
- ▶ No lateral hires
- ▶ Meets requirements to be head of Police or Fire Department
- ▶ At-will appointment
- ▶ If promoted from within, bumps back to previous rank



REQUIREMENTS FOR HIRING EMPLOYEES

- ▶ Number of positions set by Council
 - ▶ Age requirements
 - ▶ Police: 18 minimum and 45 maximum
 - ▶ Fire: 18 minimum and 36 maximum
 - ▶ Other requirements
 - ▶ Must be certifiable by a State agency
 - ▶ Must pass written examination with score of seventy (70)
 - ▶ Eligibility list is in order of score on written exam only (highest to lowest)
 - ▶ Eligibility list is good for 12 months unless exhausted
 - ▶ Rule of three (3) for hiring
 - ▶ Chief may pass over candidate(s)
- (143.023)
- (143.025)
- (143.026)



PROBATIONARY PERIOD (143.027)

- ▶ One (1) year period beginning on employee's date of hire
- ▶ Can be extended by Commission rule if
 - ▶ New employee attended Academy
 - ▶ Employee suffers illness
 - ▶ Employee called to Military duty
- ▶ Permanent employment upon serving entire probationary period
- ▶ Permanent employment = full Civil Service protection



PROMOTIONS AND ELIGIBILITY

- ▶ Two (2) year minimum service in current position before seeking promotion
 - ▶ Captain promotion in Police/Fire requires four (4) years of service in that City's Department
 - ▶ Promotional examinations
 - ▶ Must have worked two (2) years in class immediately below vacancy
 - ▶ Director can open up promotional examination to next lower rank if not enough candidates to make exam competitive
 - ▶ Procedures for promotions
 - ▶ Director responsible for preparing for promotional examinations (143.032)
 - ▶ Written promotional examination requires a passing score of seventy (70)
 - ▶ Additional points (ten (10) maximum) added for years of service in City (143.032)
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REVIEW AND APPEAL OF PROMOTIONAL EXAMINATIONS (143.034)

- ▶ All exam takers may file an appeal with Commission on any question(s) or other alleged irregularities in giving or grading exams



POLICE ALTERNATE PROMOTIONS (143.035)

- ▶ Employees may vote to adopt another means of partial scoring on promotional examinations
- ▶ Majority vote of Officers required for alternate system to be approved
- ▶ Exams usually reviewed by assessment center designed by expert outside of Department
- ▶ Scores from written exam and assessment center components combined to determine each exam taker's final score
- ▶ Final scores are used to determine the order of candidates on the promotional list



PROMOTION PROCEDURES (143.036)

- ▶ When a vacancy occurs, Chief has top three (3) names on promotional list from which to choose one to fill vacancy
- ▶ 60-day period for Chief to fill a vacancy when promotional list exists
- ▶ 90-day period for Chief to fill a vacancy when promotional examination must be administered
- ▶ Chief must promote top person on list unless she/he has a valid reason for not doing so
- ▶ Many different “valid reasons” have been used over the years
- ▶ Person passed over (#1) has right to a hearing before Commission or Hearing Examiner
- ▶ Promotional list is “good” for one (1) year



TEMPORARY DUTIES IN HIGHER CLASSIFICATION (143.038)

- ▶ Chief may assign employee to temporarily fill next higher classification position
- ▶ Temporarily appointed employee gets base salary of higher classification plus all his/her own special payments
- ▶ Not a permanent promotion under Chapter 143



SALARY UNDER CHAPTER 143 (143.041)

- ▶ All Police Officers and Firefighters receive same base salary
- ▶ Numerous add-ons to employees' base salaries include:
 - ▶ Longevity / seniority
 - ▶ Educational incentive
 - ▶ Assignment
 - ▶ Certification
 - ▶ Shift differential
 - ▶ Fitness incentive
- ▶ Examples of assignment pay work:
 - ▶ Canine care
 - ▶ FTO training
 - ▶ Bilingual capability



SICK LEAVE AND VACATIONS

- ▶ Sick leave (143.045)
 - ▶ Police Officers and Firefighters receive fifteen (15) working days of sick leave in twelve (12) months
 - ▶ Accumulation of leave permitted without limitation
 - ▶ Lump sum payment of accumulated sick leave when leaving employment up to ninety (90) days
- ▶ Vacation (143.046)
 - ▶ Police and Fire employees receive fifteen (15) days vacation per year
 - ▶ Chapter 143 prohibits carry over of vacation from year to year



REMOVING OR SUSPENDING EMPLOYEES FROM THEIR POSITIONS (143.051)

- ▶ Long list of “causes” in statute for removal or suspension
- ▶ Chiefs’ and City’s rules provide additional reasons for suspending or firing Civil Service employees
- ▶ Chief can temporarily suspend Civil Service employee for up to fifteen (15) days or longer if mutual agreement with employee



EXAMPLES OF REASONS FOR REMOVING OR SUSPENDING CIVIL SERVICE EMPLOYEES (143.051)

- ▶ Criminal conviction
- ▶ Incompetency
- ▶ Neglect of duty
- ▶ Lack of good moral character
- ▶ Drinking intoxicants on duty / intoxication off duty
- ▶ Conduct prejudicial to good order
- ▶ *Violation of Fire or Police Department or City rule of order*



NUTS AND BOLTS OF DISCIPLINARY SUSPENSIONS(143.052)

- ▶ Temporary suspensions for violating Civil Service, Department, or City rules can be no longer than fifteen (15) days
- ▶ Indefinite suspension is equivalent to termination
- ▶ Due process
 - ▶ Chief gives employee a written statement of charges and a copy of statement to Commission
 - ▶ Statement contains a list of Civil Service policy violations with factual details
 - ▶ Statement advises employee of appeal rights
- ▶ Chief can offer suspension longer than fifteen (15) days (up to 90 days). If accepted, no further appeal is possible
- ▶ Suspensions often coupled with “Last Chance Agreements”
- ▶ Employee has ten (10) days to file appeal with Director of Commission
- ▶ 180-day “rule” prohibits Chief from going back any further unless misconduct relates to criminal activity



APPEAL OF DISCIPLINARY SUSPENSIONS (143.053)

- ▶ Appeal before Commission which has 30 days to hold and decide the matter
- ▶ No straying outside facts and charges in Chief's firing document
- ▶ Trial type hearing with City bearing burden of proof
- ▶ Commission must find truth of charges levied by Chief against employee
- ▶ Commission decides by majority vote after all evidence is in the record
 - ▶ Permanently dismiss
 - ▶ Temporarily suspend
- ▶ Chief can reduce number of days off or exonerate and return employee to old rank
- ▶ If reinstated, employee receives back pay and benefits



DEMOTIONS (143.054)

- ▶ To demote a Civil Service employee, Chief must write a letter to Commission recommending demotion stating reasons for the demotion
 - ▶ Commission must determine if Chief has “probable cause” to demote
 - ▶ If so, Commission gives employee a notice of public hearing
- ▶ Employee may choose to have a demotion hearing heard by Hearing Examiner instead of by Commission
- ▶ Voluntary demotions not covered under this section of statute
- ▶ Voluntary demotions are usually by mutual agreement between Chief and employee.



DISCIPLINARY ACTION AFTER FELONY INDICTMENT INDICTMENT OR MISDEMEANOR COMPLAINT(143.056)

- ▶ If Civil Service employee is indicted for felony or charged with a Class A or B misdemeanor
 - ▶ Chief can temporarily suspend employee without pay for up to thirty (30) days after date of final disposition of criminal matter, even if there is an acquittal
 - ▶ Chief must notify employee of temporary suspension (until criminal charge is resolved)
- ▶ After final disposition of criminal matter, Chief can bring charges against employee for violating Civil service rules
- ▶ Criminal matters often take large amount of time to resolve, so be aware of need to write the Attorney General in some instances (143.056 (h))



HEARING EXAMINERS (143.057)

- ▶ Employee has option of having Hearing Examiner instead of Commission to hear appeals
 - ▶ If Hearing Examiner is chosen, employee relinquishes right to appeal the decision in court
 - ▶ Hearing Examiner's decision is final and binding, unless he/she lacked or exceeded jurisdiction, or decision was gotten by fraud, collusion or other unlawful means
- ▶ Parties use AAA to obtain list of Hearing Examiners to select from or mutually agree on a particular Hearing Examiner
- ▶ Hearing Examiners have same duties and powers as Commission
 - ▶ Hearing Examiner must render an opinion in thirty (30) days after close of hearing
 - ▶ Expedited hearing may be held, but this is not often done



LEAVES OF ABSENCE (143.071)

- ▶ Leaves of absence without pay
 - ▶ Police Officer or Firefighter must be granted leave without pay to attend Fire or Police convention or meeting if purpose is to
 - ▶ Secure more efficient Department
 - ▶ Better working conditions for employees
 - ▶ City may not make rule banning Firefighter or Police Officer right to appear before or petition legislature
- ▶ Also see sections of Chapter 614 of Texas Government Code
 - ▶ Covers non-Civil Service cities with similar requirements and some restrictions
 - ▶ Also covers Civil Service cities over 200,000 population



MILITARY LEAVES OF ABSENCE (143.072)

- ▶ Military leave of absence must be granted
 - ▶ To enter service
 - ▶ For initial training or
 - ▶ For annual duty in reserves or National Guard
- ▶ When military service concluded, City must reinstate employee to position held before leave
 - ▶ Must have honorable discharge
 - ▶ Must be physically and mentally fit to perform duties
 - ▶ Must re-apply within ninety (90) days of discharge and receive full seniority credit for time in military service
- ▶ Position reinstatement list for anyone bumped out of current rank
- ▶ City must continue insurances and other benefits
- ▶ Other employees can volunteer to substitute for military employee



LEAVE OF ABSENCE FOR LINE OF DUTY ILLNESS OR INJURY (143.073)

- ▶ Fully paid leave for illness or injury related to employee's line of duty
 - ▶ Leave in line with nature of illness or injury
 - ▶ Leave for maximum of one (1) year, if necessary
- ▶ Once leave provision is exhausted, employee may use other accumulated leaves before being placed on temporary leave
- ▶ If injury/illness not work-related,
 - ▶ Employee can use all accumulated leave time and then placed on temporary leave
 - ▶ If temporary disability, have someone else fill in for injured employee (voluntary)
- ▶ Upon recovery, employee reinstated at same rank and seniority before leave



REAPPOINTMENT AFTER RECOVERY FROM DISABILITY (143.074)

- ▶ Commission may approve reappointment if employee certified to have recovered from disability
- ▶ Reappointment to position held on date disability pension effective



MILITARY LEAVE TIME ACCOUNTS (143.075)

- ▶ Benefit for Firefighter or Police Officer who is member of National Guard or military reserves
- ▶ Called to active federal military duty and served on active duty for three (3) continuous months or longer
- ▶ Other employees may donate accumulated leave time without limit to help employees who are called up
- ▶ City must equally distribute leave time donated to military leave account among all employees police/fire who are eligible for this benefit



DETERMINATION OF PHYSICAL AND MENTAL FITNESS (143.081)

- ▶ If question regarding physical or mental fitness, employee must submit report from personal physician, psychiatrist, or psychologist
- ▶ If Commission, Chief, or employee questions report, Commission appoints another medical professional to examine employee and submit report
- ▶ If disagreement between two opinions, Commission appoints third medical professional to examine and serve as “tie breaker” with other two professionals



EFFICIENCY REPORTS (143.082)

- ▶ Commission has ability to design twice yearly performance evaluations
- ▶ Commission must give each employee copy of evaluation
- ▶ Employee may file rebuttal within ten (10) days of receipt of the evaluation
- ▶ Performance evaluation and rebuttal filed in personnel file



EMERGENCY APPOINTMENT OF TEMPORARY FIREFIGHTERS AND POLICE OFFICERS (143.083)

- ▶ If municipality unable to recruit qualified fire fighters or police officers because of maximum age limit (143.023) and this constitutes an emergency
- ▶ Commission can recommend additional rules governing temporary employment of persons thirty-six (36) years of age or older if
 - ▶ Designated as a temporary employee
 - ▶ Not eligible for pension benefits
 - ▶ Not eligible for appointment or promotion if a permanent applicant or employee is available
 - ▶ Not eligible to become a full-fledged civil service employee
 - ▶ Must be dismissed before a permanent civil service employee may be dismissed under (143.085)



FORCE REDUCTION AND REINSTATEMENT LIST (143.085)

- ▶ Reduction in number of positions in fire or police department
- ▶ Demotions based upon length in rank
- ▶ All reductions based upon seniority
- ▶ Those without positions placed on reinstatement list for one (1) year
- ▶ Employees laid off placed on one (1) year reinstatement list
- ▶ Reappointments in order of seniority
- ▶ Three (3) year life of reinstatement list
- ▶ No other hiring off this list until it is exhausted



POLITICAL ACTIVITIES (143.086)

- ▶ Civil Service employees may not take active part in political campaign while on duty or in uniform
- ▶ Active part involves
 - ▶ Political speech
 - ▶ Distributing literature
 - ▶ Writing letter
 - ▶ Signing petition
 - ▶ Actively and openly soliciting votes
 - ▶ Derogatory remarks about candidate
 - ▶ Cannot require employees to contribute to political fund or work on candidate's campaign
- ▶ Commission and city council may not further



PERSONNEL FILE (143.089)

- ▶ Director maintains personnel file on all Civil Service employees
- ▶ Contents:
 - ▶ Commendations/honors
 - ▶ Misconduct that resulted in disciplinary action
 - ▶ Periodic evaluations
- ▶ Must remove negative items if Commission or Hearing Examiner overturns
- ▶ Director must notify employee of negative letter and request rebuttal if employee desires
- ▶ Employee entitled to get copy of any items in personnel file
- ▶ Employee must give permission to Director to release information in personnel file unless release required by law
- ▶ Department may retain “G” file on employees



RELEASE OF PHOTOGRAPHS OF POLICE OFFICERS (143.090)

- ▶ City may not release photograph of police officer unless
 - ▶ Officer charged with criminal offense
 - ▶ Officer is party to Chapter 143 appeal
 - ▶ Photo used in judicial proceeding written consent by officer





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