

**RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 1120-14
TENNESSEE EMPLOYEE MEDIATION PROGRAM**

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1120-14-.01 STATEMENT OF POLICY.

- (1) It is the policy of the State of Tennessee to encourage the use of mediation as a valuable tool for all state employees to resolve workplace issues. Mediation is a process whereby the parties themselves, with the assistance of a third party neutral, seek to develop and agree upon solutions to issues in the workplace. The primary purpose of the Tennessee Employee Mediation Program ("the program") is to provide a responsive, informal, confidential, and effective means of resolving human resource issues.
- (2) Mediation is designed to supplement and not to limit or replace the appeal procedures detailed in the Act. Participation in mediation will not toll the filing deadlines for appeal as described in these rules. Mediation may not be used to circumvent state or departmental policies.
- (3) The Commissioner is responsible for providing and maintaining the basic standards and guidelines for implementation and administration of this program. Appointing authorities are responsible for proper implementation of this program throughout their respective agencies and for ensuring that all employees are aware of the provisions of this program.

Authority: T.C.A. § 8-30-104 and 8-30-105. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

1120-14-.02 COVERAGE.

- (1) Access to Mediation. Access to mediation services under this rule is available to any employee in the state service. Access to mediation services under this rule shall not be available to those employees excepted under the terms of T.C.A. § 8-30-102(b).
- (2) Definition of Workplace Issues. For purposes of this rule, "workplace issues" may include, but is not limited to, the following:
 - (a) Disciplinary action taken against an employee involving suspensions, demotions, and terminations.
 - (b) Workplace harassment and discrimination as defined by the Department.
 - (c) Involuntary geographical transfer of an employee or official duty station more than fifty (50) miles. Distance will be determined by drawing a circle, with a fifty (50) mile radius, centered on the previous official duty station;
 - (d) Prohibited political activity as outlined in T.C.A. Title 2, Chapter 19 (the "Little Hatch Act");

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- (e) Other workplace issues involving a relational, communication, or values conflict in state government employment.
- (3) Matters not eligible for Mediation. The following actions are not considered matters eligible for mediation:
- (a) Actions that affect an employee serving an initial probationary period;
 - (b) Non-selection for promotion when the appointment was in compliance with these rules and the Act;
 - (c) Actions resulting from reductions in force when the actions by the Appointing Authority were in compliance with statutes and rules;
 - (d) Shift, post, and overtime assignments;
 - (e) Reasonable work assignments outside those normally associated with the employee's assigned job classification;
 - (f) Salary range assigned to classifications;
 - (g) Administration of salary increases established and funded by the legislature;
 - (h) Classification of position;
 - (i) Denial of leave requests except as provided for in T.C.A. § 8-50-110 and T.C.A. § 8-50-802;
 - (j) The terminology, formation, intent, implementation or construction of agency rules or policies; and
 - (k) Any other matter over which an Appointing Authority or the Commission has no control or jurisdiction or is without the authority to grant requested relief.
- (4) No Grounds for Complaint. Nothing contained in this rule shall be construed to create or provide any substantive or procedural right or interest in state government employment, and the denial of access to mediation services shall not constitute any grounds for complaint or appeal.
- (5) Voluntary Participation. Participation in mediation shall be voluntary and conducted only by agreement of both parties. Employees who participate in or opt out of mediation shall do so without interference, coercion, reprisal, discrimination, retaliation, or harassment.

Authority: T.C.A. § 8-30-104 and 8-30-105. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

1120-14-.03 PROCESS AND PROCEDURE.

- (1) To commence the mediation process, an employee or the Appointing Authority shall file a request to the Department on a form prescribed by the Commissioner. Upon receipt of the request for mediation, the Department will notify the employee's Appointing Authority and the employee whose consent and presence will be necessary for the mediation. If consent to mediate is obtained by the individuals involved, and the Department otherwise considers the request appropriate for mediation under the guidelines set forth above, the Department shall

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refer the matter to an approved mediator. If consent is not obtained or the Department considers the matter not appropriate for mediation, the requesting employee or Appointing Authority will be so notified.

- (2) The Appointing Authority, or designee, shall attend the mediation to reach an agreement and implement any final mediation agreement.
- (3) Upon convening the mediation, the parties shall execute an agreement to mediate, which form shall be approved by the Commissioner and shall become part of the mediation file. Either party or the mediator may voluntarily withdraw from the mediation at any time or at any stage in the process.
- (4) Each party may have a representative present during the mediation. Any representative present at the mediation shall be required to sign the agreement to mediate and be bound by its terms. However, as mediation is not an adversarial proceeding, the role of any representative shall be limited to that of an advisor and observer, and not as an advocate on behalf of either party. The mediator shall maintain the authority to restrict the activities of any representative and shall have the discretion to terminate the mediation.
- (5) Audiotape, videotape, or other automated or electronic recordings of the mediation shall not be permitted.
- (6) Any mediated settlement agreement shall be approved by the parties' Appointing Authority. Copies of the mediation settlement agreement shall be provided to the involved parties. The mediation settlement agreement shall not become part of any involved party's personnel file. Any mediated settlement agreement shall not be considered confidential pursuant to T.C.A. §10-7-503. If the workplace issue involves an appeal filed pursuant to T.C.A. § 8-30-318, any mediated settlement agreement shall be forwarded to the Board of Appeals. Any mediated settlement agreement shall not be contrary to the laws, rules, regulations or policies of the State of Tennessee or federal law, or exceed the Appointing Authority's legal authority.
- (7) Neither a request for, nor participation in mediation shall preclude an Appointing Authority from taking independent disciplinary action as needed in dealing with an employee's job performance or conduct.
- (8) Participation in mediation shall not require the use of accrued leave if the participating employee has obtained the prior approval of his/her supervisor or Appointing Authority.
- (9) Neither a request for, nor participation in mediation shall affect the time periods for filing complaints or appeals pursuant to T.C.A. § 8-30-318.
- (10) By submitting a request for mediation and participating in the mediation process, participants agree not to subpoena the mediator or his/her records or notes pertaining to the mediation in any court or administrative proceedings, unless the proceeding concerns alleged misconduct by the mediator or enforcement of the mediated settlement agreement.
- (11) While serving as a mediator, the mediator is not acting in a supervisory or managerial capacity for the State of Tennessee or his/her Appointing Authority.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed July 5, 2012; effective October 3, 2012,

1120-14-.04 TRAINING AND CERTIFICATION.

- (1) The Department shall maintain a list of state affiliated mediators approved to conduct mediations under this program.
- (2) An individual desiring to be listed on the panel of approved mediators shall have satisfactorily completed mediation training which has been approved by the Alternative Dispute Resolution ("ADR") Commission of the Tennessee Supreme Court, or otherwise satisfy the requirements for listing as a mediator pursuant to the rules of the ADR Commission; and further receive the approval and recommendation for listing on the panel of mediators from the individual's Appointing Authority. The Department shall designate the necessary continuing education program for panel mediators. Final approval for listing or removal from the panel shall be determined by the Commissioner.

Authority: T.C.A. § 8-30-104 and 8-30-105. **Administrative History:** Original rule filed July 5, 2012; effective October 3, 2012.