



# MERIT COUNCIL FAQs

## **Q1. What is the Merit System Civil Service Council (hereinafter “Merit Council”)?**

**A1.** The Merit Council is a three-person council created by Multnomah County Charter (7.20 Civil Service Commission) to enforce the county’s personnel rules, County Code, and the County Charter. The Merit Council is comprised of citizens who are neutral fact-finders appointed by the Board of Commissioners and do not receive compensation for their service. The rules for the Merit Council are found in Multnomah County Personnel Rule (MCPR) § 2-20.

## **Q2. Who may appeal to the Merit Council?**

**A2. Management Employees** may appeal disciplinary actions more severe than a letter of reprimand if the disciplinary action violates Multnomah County Personnel Rules (MCPR), County Code, or the County Charter.

**Represented employees** may appeal personnel actions not covered by a grievance procedure if the personnel action violates a MCPR, the County Code, or the County Charter.

**Executive, temporary, and on-call employees** have no appeal rights pursuant to MCPR §4-70-030. **Probationary employees** have no appeal rights pursuant to MCPR §2-15-040.

## **Q3. What kinds of personnel actions may be appealed by represented employees?**

**A3.** For an appeal to be heard by the Merit Council, the employee appealing must show the personnel action violated a MCPR, the County Code or the County Charter. Personnel action is defined as any employment action taken by the county with reference to an employee or position (MCPR §1-10-040). An employment action is generally understood to mean a change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. Personnel actions that are covered in grievance procedures may not be appealed to the Merit Council.

**Q4. Can employees appeal the test results or their non-placement on an eligibility list for a recruitment they applied for?**

**A4.** Under MCPR § 5-20-070, employees who want to appeal their test results or non-placement on an eligibility list they applied for should, within ten (10) days after the date of notification of the test results or non-placement, make a request in writing to the department or Central Human Resources, whichever conducted the recruitment, for a disqualification review and/or a re-evaluation of the test results.

If employees are not satisfied with the response they receive from the department or Central Human Resources, they may send a letter appealing the decision to the Multnomah County Human Resources Director within ten (10) days of receiving the response. The Human Resources Director will respond to the applicant within fifteen (15) days. The decision of the Human Resources Director is final for non-represented employees. Represented employees have ten (10) days to bring an appeal to the Merit Council after the Human Resources Director's decision.

**Q5. What do employees need to include in an appeal to the Merit Council?**

**A5.** Employees who want to file an appeal to the Merit Council are strongly encouraged to read MCPR § 2-20, 9.300 - 9.360 of the County Code, and 7.20 of the County Charter before filing an appeal.

In accordance with MCPR § 2-20-010(B)(1)-(10), appeals to the Merit Council must:

- (1) Be in writing;
- (2) Be signed by the employee;
- (3) Be dated;
- (4) Be addressed to the Council;
- (5) Contain an explanation of the action being appealed;
- (6) Include an explanation of the violation or identify the rule alleged to have been violated;
- (7) State the date of the action taken or not taken which the employee believes violated the MCPRs, County Code, and/or the County Charter;
- (8) Contain a statement of desired redress or remedy
- (9) List the names of requested witnesses to appear on behalf of the appellant; and
- (10) Include a description of the evidence to be used by appellant on appeal.

**Q6. What format should employees use when submitting an appeal?**

**A6.** Employees may write a letter that addresses each of the ten (10) requirements found in MCPR § 2-20-010(B)(1)-(10). Failure to submit an appeal that addresses each of the requirements will result in dismissal of the appeal by the Executive Secretary.

**Q7. Is there a time limit on when an employee can file an appeal?**

**A7.** Yes, there are required timelines found in MCPR § 2-20-010(A)(1)-(2) that employees must adhere to in order for an appeal to the Merit Council to be accepted. Failure to meet the timelines will result in dismissal of the appeal by the Executive Secretary.

For **management employees** filing an appeal regarding a disciplinary action, the appeal must be delivered to the Executive Secretary of the Merit Council no later than ten (10) calendar days from the date of the letter imposing the discipline.

For **represented employees** appealing personnel actions not covered by a grievance procedure, the appeal must be delivered to the Executive Secretary of the Merit Council no later than ten (10) calendar days after the effective date of that personnel action or for appeals under MCPR § 5-20-070 receipt of the Multnomah County Human Resources Director's response. If the employee was not immediately aware of the personnel action, the appeal must be filed within ten (10) calendar days of the date the employee became aware or should have been aware of the action.

**Q8. Where do employees submit an appeal to the Merit Council?**

**A8.** Appeals should be submitted to the Executive Secretary of the Merit Council at MC 503/3, 501 SE Hawthorne Blvd. Suite 300 Portland, OR 97214.

**Q9. What is the role of the Executive Secretary?**

**A9.** The Executive Secretary is a neutral Multnomah County employee who makes the initial determination of whether an appeal is denied or accepted to be heard before the Merit Council. The Executive Secretary also maintains Merit Council records and coordinates the Merit Council hearings process.

**Q10. Why would an appeal be dismissed by the Executive Secretary?**

**A10.** An appeal for a Merit Council hearing will be denied if:

- The appellant did not include all of the requirements outlined in MCPR § 2-20-010(B)(1)-(10),
- The appeal was not submitted in a timely manner in accordance with MCPR § 2-20-010(A)(1)-(2),
- The appeal from a represented employee does not specify a personnel action occurred that violates a MCPR, the County Code, or the County Charter, or
- The appeal was submitted by an employee that has no appeal rights under MCPR § 2-20-101(A)(3) because they are classified as executive, temporary, on-call, or probationary.

**Q11. Can employees appeal a dismissal by the Executive Secretary?**

**A11.** Employees may file an appeal of the dismissal within ten (10) calendar days after receiving your decision from the Executive Secretary. The appeal of the dismissal should be filed with the Executive Secretary, who will then forward the appeal to the County Attorney's Office for a decision. The County Attorney's Office will issue a decision on the dismissal within ten (10) days of receiving the appeal. The County Attorney's Office decision is final and may not be appealed.

**Q12. What happens after an appeal is accepted by the Executive Secretary?**

**A12.** If the Executive Secretary determines the appeal contains issues of disputed fact, the appeal will be referred to a Hearings Officer for hearing. If there are no issues of disputed fact, the appeal will be referred directly to the Merit Council.

The Merit Council process takes time due to scheduling of witnesses, Hearings Officer, and Merit Council members. The Executive Secretary will provide appellants with at least fifteen (15) days notice regarding the date and time of the hearing.

Typically, the hearing will last for one day unless issues are complex, then additional days may be needed. In the appeal hearing, the appellant usually presents their evidence and case first. This is determined in conjunction with the Hearings Officer at the time of the hearing. Employees are encouraged to prepare and present a brief opening statement of their position at the hearing. The county is represented by the County Attorney's Office.

**Q13. Do employees need to hire an attorney for a Merit Council hearing?**

**A13.** No, employees may represent themselves or ask someone else to represent them. The Merit Council and Hearings Officer can assist employees in understanding procedural matters. The Merit Council and the Hearings Officer cannot give legal advice, make recommendations, or act as an advocate. If employees do hire an attorney, they are responsible for all costs regardless of the outcome of their appeal.

**Q14. Can an employee be represented by a union representative or steward at a Merit Council hearing?**

**A14.** An employee can select a representative of their choice for a Merit Council hearing, but if that person is a union steward or representative, they may not serve in an official union capacity.

**Q15. How can employees obtain records and witnesses they need for their case?**

**A15.** All witness and records requests are coordinated by the Executive Secretary. The Executive Secretary will summon the witnesses and records based upon the request submitted in the appeal. Employees should not use county time to summon witnesses or records. If the request for witnesses or records is not honored by the Executive Secretary, employees may request a subpoena from the Merit Council or Hearings Officer. Employees will need to show how the witness and/or record are relevant to your appeal.

**Q16. Is the hearing confidential?**

**A16.** No, all Merit Council hearings are subject to public record. The hearing will be electronically recorded and made available upon request.

**Q17. Who has the burden of proof?**

**A17.** The employee has the responsibility of proving that the action of the county violated the County Charter, County Code, or an MCPR.

**Q18. What types of evidence may be submitted at a hearing?**

**A18.** Each party has the right to present its case by oral or documentary evidence, to conduct cross-examination for disclosure of the facts, and to submit rebuttal evidence. All witnesses who testify before the Hearings Officer or the Merit Council must swear that their testimony is truthful.

**Q19. Who determines what evidence may be admitted in the hearing?**

**A19.** If either the employee or county makes an objection concerning evidence, the Hearings Officer or Merit Council will decide whether the evidence is allowed. Evidence may be excluded if it is immaterial, irrelevant or unduly repetitive.

**Q20. How should employees prepare the documents they want to submit as evidence at the hearing?**

**A20.** To make the hearing flow more efficiently, employees are encouraged to mark all documents they are submitting as evidence in the lower right corner with their initial and document number. For example, Joanne Doe should mark the first document JD1, the second document JD2, etc.

If the appeal is in front of the Hearings Officer, employees need five (5) copies of all of documents submitted for evidence, so that a copy is given to the county, the Hearings Officer, the Executive Secretary, any witnesses that may be questioned about the document, and a copy is available for the employee to use in the proceeding. If the appeal is in front of the Merit Council, the employee will need two (2) additional copies, so that all the members of the Merit Council have a copy.

**Q21. How are employees notified about the decision regarding their appeal?**

**A21.** Within thirty (30) days after the close of taking evidence, the Merit Council or Hearings Officer will issue a decision in writing to the Executive Secretary. The Executive Secretary will deliver the decision to the appellant with a certificate of service and a copy to the other involved parties.

**Q22. Can employees appeal a decision made by a Hearings Officer?**

**A22.** A Hearings Officer decision can be appealed to the Merit Council within ten (10) calendar days after the date listed on the certificate of service that accompanies the decision. Prior to a final decision by the Merit Council, the parties will be afforded a reasonable opportunity to present oral or written arguments, but not new evidence.

The Merit Council will issue its final decision within thirty (30) days after the close of the hearing on review, unless it gives notices to the parties and extends the period for not more than sixty (60) days. The Executive Secretary will deliver the decision to the appellant with a certificate of service and a copy to the other involved parties.

**Q23. Can employees appeal a decision made by the Merit Council?**

**A23.** If the final decision made by the Merit Council is unanimous, there is no further appeal. If the decision is not unanimous, the decision may be appealed to the Board of County Commissioners within ten (10) calendar days of the Merit Council's decision. The appeal must be in writing and filed with the Clerk of the Board. The Board will make its decision within forty-five (45) days from date of receipt of notice of appeal.

**Q24. After a Hearings Officer or the Merit Council has issued a decision, what issues can be appealed?**

**A24.** Under MCPR § 2-20-080(B) and MCPR § 2-20-090(B)(2), the bases for appeal of a Hearings Officer or Merit Council decision are limited to arguments that the Hearings Officer or Merit Council:

- (1) Exceeded Jurisdiction;
- (2) Failed to follow the procedure required by the MCPRs, County Code or Charter;
- (3) Made a finding or ruling not supported by substantial evidence in the whole record; or
- (4) Improperly construed the law.