

Rule 422

Employee Separation Procedures

Applicability: Rule 422 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 422 may be superseded in whole or in part by the collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in this Rule are applicable to employees in all classes.

Article I: Separation Procedures

Article II: Termination of Temporary Employee

Article III: Termination of Limited Tenure Employee

Applicability: Article III, Rule 422, shall apply only to all Service-Critical classes of the Municipal Transportation Agency (MTA) represented by the Transport Workers Union (TWU), Locals 200 and 250A, except that the provisions of Rule 422 may be superseded in whole or in part by the collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in this Rule are applicable to employees in all classes.

Article IV: Dismissal of Permanent Employee

Article V: Resignation - Services Unsatisfactory

Article VI: Absence from Duty Without Leave (Automatic Resignation)

Article VII: Request to Remove Non-Permanent Ban

Rule 422

Employee Separation Procedures

Article I: Separation Procedures

Applicability: Article I, Rule 422 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superceded in whole or in part by the collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 422.1 Rules of Procedure Governing Separation Hearings

422.1.1 This Article prescribes the procedures governing the separation of the following:

1. Temporary employee from a list
2. Limited tenure employee
3. Dismissal of permanent employee

422.1.2 A notice of termination on the prescribed form from the MTA Director of Transportation/Designee to the employee detailing the specific reason(s) for the termination, shall serve as official notice of such termination. The notice of termination shall be sent by certified mail or personally delivered. Copies of the termination form must be filed in the City's Department of Human Resources.

422.1.3 The notice of termination must include the following information:

- 1) The employee has the right to a hearing before the Civil Service Commission provided that a request for hearing is made in writing and is received by the Executive Officer within twenty (20) calendar days from the date of termination of appointment or from the date of mailing of the Notice of Termination whichever is later. In the event the 20th day falls on a non-business day, the deadline shall be extended to the close of business of the first business day following the 20th day.
- 2) The decision of the Civil Service Commission may affect any future employment with the City and County of San Francisco.
- 3) Representation by an attorney or authorized representative of the employee's choice at the inquiry;

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4) Notification of date, time and place of inquiry a reasonable time in advance; and

5) Inspection by the employee's attorney or authorized representative of those records and materials on file with the Executive Officer which related to the termination.

422.1.4 Any interested party may request a continuance of the inquiry.

422.1.5 The stated reason(s) for the termination must be enumerated. Records of warnings, reprimands and previous suspensions, if applicable to the reasons for termination, must be attached to the termination form.

422.1.6 To the extent practicable, the departmental representative who has the most complete personal knowledge of the facts which constitute the basis for the termination shall appear when the matter is to be considered by the Civil Service Commission. The matter will be heard in accordance with the procedures provided elsewhere in these Rules. Interested parties may record the inquiry if they provide the necessary equipment.

Sec. 422.2 **Eligibility Status Pending Civil Service Commission Action on Termination or Dismissal**

Except as otherwise ordered by the MTA Director of Transportation/Designee, pending action of the Civil Service Commission on termination of any appointment or upon preferring of charges for dismissal, the name of the appointee shall be placed under waiver for all appointment(s) on any eligible list on which the person has standing and shall be otherwise ineligible for any employment in the City and County service.

Sec. 422.3 **Effect of Civil Service Commission Approval of Termination or Dismissal**

Unless specifically ordered otherwise by the Civil Service Commission, approval of termination or dismissal shall result in the cancellation of all current examination and eligibility status, and all future applications will require the approval of the City's Human Resources Director, after completion of one (1) year's satisfactory work experience outside the City and County service and by recommendation of the department head or Human Resources Director, the person shall be ineligible for future employment with the department from which separated.

Sec. 422.4 **Effect of Failure to Request Civil Service Commission Review of Termination or Dismissal**

422.4.1 Failure to request a Civil Service Commission review within the twenty (20) day period as provided elsewhere within this Rule shall result in the following actions:

- 1) The adoption of the departmental recommendation by MTA Director of Transportation/Designee; or approval of the separation, if such action is appropriate; and/or
- 2) Dismissal from the City and County service; and/or
- 3) The cancellation of all current examination and eligibility status; and/or
- 4) All future applications in City departments other than MTA shall be subject to the review and approval of the City's Human Resources Director after satisfactory completion of one year's work experience outside City and County service; and/or
- 5) By recommendation of the department head or Human Resources Director the separated employee may not be employed within MTA in the future.

422.4.2 This action shall be final and shall not be subject to reconsideration unless the person can present evidence in writing of being unable to communicate with the Commission within thirty (30) days of being able to so communicate. All requests for reconsideration shall be in writing and shall be processed in accordance with the procedure for reconsideration provided elsewhere in these Rules.

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Article II: Termination of Temporary Employee

Applicability: Article II, Rule 422, shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 422 may be superceded in whole or in part by the collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 422.5 **Procedure for Termination of Temporary Employee**

422.5.1 A temporary employee may be terminated for cause by the MTA Director of Transportation/Designee at any time. The notification and hearing procedure shall be in accordance with the provisions of this Rule.

422.5.2 The Commission shall take one or more of the following actions:

- 1) Declare the person dismissed from the service and remove the name of the person from the eligible list;
- 2) Order the name of the person removed from any other list or lists on which the person has eligibility;
- 3) Restrict future employment as it deems appropriate;
- 4) Return the name of the person to the eligible list from which appointed without restriction or under such conditions for further appointment as it deems appropriate. If the list from which the terminated employee was appointed has expired, the name of the employee may be placed on a reemployment register for the class for an additional period of eligibility of twelve (12) months under such conditions for further appointment as the Commission deems appropriate.

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Article III: Termination of Limited Tenure Employee

Applicability: Article III, Rule 422, shall apply only to all Service-Critical classes of the Municipal Transportation Agency (MTA) represented by the Transport Workers Union (TWU), Locals 200 and 250A, except that the provisions of Rule 422 may be superceded in whole or in part by the collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 422.6 **Procedure for Termination of Limited Tenure Employee**

422.6.1 A limited tenure employee may be terminated for good cause by the MTA Director of Transportation/Designee at any time with the approval of the Civil Service Commission. The notification and hearing procedure shall be in accordance with the provisions this Rule.

422.6.2 The Commission shall take one or more of the following actions:

- 1)** Approve the termination and declare the person dismissed from the service.
- 2)** Order the name of the person removed from any regular eligible list or lists on which the person may have standing.
- 3)** Restrict future employment as it deems appropriate.
- 4)** Disapprove the termination and reinstate the person to the department.

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Article IV: Dismissal of Permanent Employee

Applicability: Article IV, Rule 422, shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 422 may be superceded in whole or in part by the collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 422.7 Procedure for Dismissal of Regular Permanent Employee

422.7.1 Dismissal of Permanent Employee

A permanent employee who has completed the probationary period may be dismissed for cause upon written charges and after having an opportunity to be heard in her/his own defense.

422.7.2 Notification of Time and Place of Hearing

When the charges are made, the MTA Director of Transportation/Designee shall notify the person in writing of the time and place where the charges will be heard by mailing such statement via certified mail to the employee's last known address. Such hearing shall not be held within five (5) working days of the date on which the notice is mailed. The employee may be represented by counsel or other representatives of the employee's choice.

422.7.3 Hearing Officer - Sources

The hearing itself, as required by Charter, shall be conducted by a hearing officer under contract to the MTA chosen as follows in each case: From organizations such as the American Arbitration Association or the State Conciliation Service which customarily provide hearing officers; or from a list of qualified hearing officers certified by the Civil Service Commission, which shall be kept current and contain at all times at least three (3) names.

Sec. 422.7 Procedure for Dismissal of Regular Permanent Employee (cont.)**422.7.4 Hearing Officer - Method of Selection**

The Civil Service Commission shall certify its list of hearing officers by the following method:

- 1) The Commission shall cause to be published in a newspaper of general circulation an announcement of openings for hearing officers. This announcement shall run either for a period of five (5) working days or for two (2) weekends at the discretion of the Civil Service Commission;
- 2) The Commission shall include in its list only such applicants as to satisfy the following criteria: have at least one (1) year of experience in the conduct of judicial hearings in the capacity of a hearing officer and have experience in the resolution of disputes involving the interpretation of labor-management contracts;
- 3) The Executive Officer shall post the list of panel members so selected for a period of five (5) working days during which time employees, public employee organizations or city departments may seek to demonstrate in writing that any member of the panel is unacceptable. The Executive Officer shall review such challenges and shall determine whether on the basis of the challenge the individual should be eliminated from the approved list.

422.7.5 Hearing Officer - Challenge of Employee

The employee may challenge the competence of the hearing officer who is scheduled to hear the employee's case on the basis that the hearing officer is in some demonstrable manner biased or prejudiced against the employee and that, therefore, the employee will not be afforded a fair hearing. The challenge must be made in the following manner:

- 1) The challenge must be by written affidavit;
- 2) The challenge must be received by the MTA Director of Transportation/Designee at least twenty four (24) hours prior to the commencement of the hearing;

Sec. 422.7 Procedure for Dismissal of Regular Permanent Employee (cont.)**422.7.5 Hearing Officer - Challenge of Employee (cont.)**

3) Should the challenge cause the department to incur expense through the cancellation of the hearing officer, shorthand reporter, etc., such expenses shall be borne by the employee in keeping with the section on costs below. If the employee has been placed on suspension pending the hearing, any delay in the hearing occasioned through challenge or replacement of a hearing officer shall be considered a delay of the hearing by act of the accused employee and shall extend indefinitely the thirty (30)-day period referred to in Charter Section A8.341;

4) In the event that the MTA Director of Transportation/Designee shall determine that the hearing officer cannot afford the employee a fair hearing, MTA shall immediately make arrangements to obtain the services of another hearing officer in accordance with the methods stated above.

422.7.6 Hearing Officer - Evidence to be Considered

The hearing officer shall decide the case on the basis of the evidence presented. The hearing officer shall determine whether the accused employee has adhered to the applicable orders, Rules, regulations, ordinances, Charter provisions, or applicable sections of any memoranda of agreement or memoranda of understanding. The hearing officer shall be prohibited from considering the relative merits or social desirability of such orders, Rules, regulations, ordinances, Charter provisions or sections of memoranda of agreement or memoranda of understanding as may be applicable to the case.

422.7.7 Hearing Officer - Decision

Within five (5) working days of the close of the hearing, unless specifically exempted for good cause by the MTA Director of Transportation/Designee, the hearing officer shall notify the MTA Director of Transportation/Designee in writing of a decision in the case. The hearing officer shall be limited to the following options in deciding the case:

1) The hearing officer may exonerate the employee in which case the record may, at the discretion of the hearing officer, be expunged and the employee may receive back pay for all time lost;

Sec. 422.7 Procedure for Dismissal of Regular Permanent Employee (cont.)**422.7.7 Hearing Officer - Decision (cont.)**

2) The hearing officer may find the employee guilty as charged, in which case the following provisions apply:

- the hearing officer may order the employee returned to work but without back pay for any time not worked between the time charges were made and the time of the hearing or the time the hearing officer renders a decision, whichever is longer;
- the hearing officer may suspend the employee without pay but may not at her/his discretion, order back pay for any periods not worked prior to the hearing; or
- the hearing officer may dismiss the employee.

422.7.8 Notification of Decision of Hearing Officer

Within five (5) working days after the MTA Director of Transportation/Designee receives written notification of the decision of the hearing officer, the MTA Director of Transportation/Designee shall inform the employee in writing of the decision of the hearing officer and shall, by copies of this correspondence and the written notification from the hearing officer, inform the Civil Service Commission of the decision and the action taken.

422.7.9 Costs

1) MTA shall pay all fees for hearing officers and court reporters, and, if required, the cost of preparation of the transcript with the following exception:

2) If additional costs are incurred as a result of any request of the employee (such as costs occasioned by the untimely postponement of a hearing, challenges of hearing officer, etc.), all such additional costs, such as cancellation fees or fees when court reporters cannot be notified of the cancellation of a hearing within their established and customary limits, shall be borne by the employee.

Sec. 422.8 **Procedure for Hearing on Charges Against an Employee When the MTA Director of Transportation Neglects or Refuses to Act**

422.8.1 When the MTA Director of Transportation neglects or refuses to act pertaining to the removal of any employee subject to the civil service provisions of the Charter, the Commission may hear and determine any charge filed by a citizen, or by any member of or by an authorized agent of the Commission. In rendering its decision, the Commission shall determine the charges and may exonerate, suspend or dismiss the accused employee in accordance with the provisions of Charter Section A8.341.

422.8.2 The MTA Director of Transportation/Designee shall appear when the matter is to be considered. The matter will be heard in accordance with this procedure provided elsewhere in these Rules.

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Article V: Resignation - Services Unsatisfactory

Applicability: Article V, Rule 422, shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 422 may be superceded in whole or in part by the collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 422.9 Procedure for Review of Resignation - Services Unsatisfactory

422.9.1 Notice of Proposed Action

If the services of a resignee are to be designated as unsatisfactory, the MTA Director of Transportation/Designee shall notify the resignee of intention to so certify the resignation. The resignee shall be informed of the reasons for this determination and shall be offered an opportunity for review by the MTA appointing officer or designated representative.

422.9.2 Action by the MTA Director of Transportation/Designee

As a result of review, if such review is requested by the resignee, the MTA Director of Transportation/Designee may amend or sustain the certification of services.

422.9.3 Notification to Employee

If the MTA Director of Transportation/Designee amends the resignation, the resignee shall immediately be notified by copy of the resignation form with services clearly marked satisfactory. If the MTA Director of Transportation/Designee sustains the original determination, the resignee shall immediately be notified on the prescribed separation form.

422.9.4 Report Requirement

A resignation certified by the MTA Director of Transportation/Designee as services unsatisfactory shall be accompanied with a statement of the reasons for this action and shall contain a statement that the notification and review procedure outlined above was completed.

Sec. 422.9 **Procedure for Review of Resignation - Services Unsatisfactory**
(cont.)

422.9.5 **Commission Review**

The Commission shall consider the resignations of persons whose services have been designated as unsatisfactory provided that a request for review is made in writing and is received in the Commission office within twenty (20) calendar days of the date of mailing of the Notice of Separation designating the services as unsatisfactory. In the event the 20th day falls on a non-business day, the deadline shall be extended to the close of business on the first business day following the 20th day. The Commission shall take one or more of the following actions:

- 1) Accept the resignation as certified;
- 2) Remove the name of the resignee from other eligible lists on which the eligible's name appears;
- 3) Restrict participation in future examinations as it deems just;
- 4) Restrict future employment as it deems just;
- 5) Accept the resignation as certified and order that future employment be without restriction including the right to request reappointment; or
- 6) Remand the resignation to the MTA Director of Transportation/Designee for reconsideration.

422.9.6 **Failure to Request Review**

- 1) Failure to request a Commission review within the twenty (20)-day period provided above shall result in the adoption of the MTA departmental recommendation as; or the cancellation of all current examination and eligibility status; and all future applications other than at MTA shall be subject to the review and approval of the City's Human Resources Director after satisfactory completion of one (1) year's work experience outside the City and County service.
- 2) This action shall be final and shall not be subject to reconsideration unless the person can present evidence in writing of being unable to communicate with the Commission within thirty (30) days of being able to so communicate. All requests for reconsideration shall be in writing and shall be processed in accordance with the procedure for reconsideration provided elsewhere in these Rules.

Sec. 422.9 **Procedure for Review of Review of Resignation - Services Unsatisfactory (cont.)**

422.9.7 **Hearing Procedures**

Hearings pursuant to this Rule shall be conducted in accordance with the procedures provided elsewhere in these Rules.

422.9.8 **Waiver of Employment**

Pending final action, the resignee shall be ineligible for all employment.

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Article VI: Absence from Duty Without Leave

Applicability: Article VI, Rule 422 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 422 may be superceded in whole or in part by the collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 422.10 **When Five Days or Less**

Absence from duty without proper authorization for any period of time up to and including five (5) or less working days shall be cause for disciplinary.

Sec. 422.11 **When Over Five Days - Automatic Resignation**

422.11.1 Absence from duty without proper authorization in excess of five (5) continuous working days shall constitute abandonment of the position and shall be recorded as an automatic resignation. The MTA Director of Transportation/Designee shall notify the employee on the prescribed form. The employee shall be notified by certified mail.

422.11.2 The automatic resignation shall be subject to appeal to the Commission, if so requested by the person in writing, within fifteen (15) calendar days of the mailing date of the notice of automatic resignation. The fifteen (15) days includes the date on which the notice was mailed. The Commission shall hear such appeal. The decision of the Commission shall be final and not be reconsidered.

422.11.3 Failure to appeal within the fifteen (15) day period shall result in the adoption of the recommendation of the department head as approved by the Human Resources Director, the cancellation of all current examination and eligibility status; the review and approval of the City's Human Resources Director, of all future applications in departments other than MTA after satisfactory completion of one (1) year's work experience outside the City and County service.

422.11.4 If the person can present evidence in writing of being unable to communicate with the MTA Director of Transportation/Designee within thirty (30) calendar days of being able to so communicate, the automatic resignation may then be subject to reconsideration by the Commission. All requests for reconsideration will be in writing and will be processed in accordance with the procedures for reconsideration provided elsewhere in these Rules.

Sec. 422.11 **When Over Five Days - Automatic Resignation (cont.)**

- 422.11.5** Pending final action under this Rule, an individual under automatic resignation shall be placed under waiver on all eligible lists on which the individual's name appears.
- 422.11.6** In considering the appeal of an automatic resignation, the Commission shall take one or more of the following actions:
- 1) deny the appeal and approve the resignation;
 - 2) order the name of the person removed from any other eligible list or lists on which the person's name appears,
 - 3) restrict participation in further examinations as it sees fit,
 - 4) return the name to the eligible list under such conditions for further appointment as it deem appropriate, or
 - 5) disapprove the resignation.

Sec. 422.12 **Hearing Procedures**

Hearings conducted under this Rule shall be conducted in accordance with the procedures provided elsewhere in these Rules.

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Article VII: Request to Remove Non-Permanent Ban

Applicability: Article VII, Rule 422, shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA).

Sec. 422.13 **Those Individuals Covered Under Rule 422, Article VII**

Former employees of the City and County of San Francisco who were banned from future employment in accordance with the provisions of Civil Service Rule 422 may request reconsideration of any non-permanent ban if it has been five (5) or more years since the ban was imposed. For the purpose of this Rule, any City-wide ban imposed before April 21, 2014 is considered a permanent ban not subject to reconsideration.

Sec. 422.14 **Reconsideration**

Individuals as defined in Section 422.13 may submit a written request to the Human Resources Director for reconsideration of a ban on their future employment. It shall be the responsibility of the requesting individual to submit to the Human Resources Director all available documentation and information regarding the separation. The individual must also provide reasons for the request for reconsideration of the employment restriction.

Sec. 422.15 **Action of the Human Resources Director**

The Human Resources Director shall consider the request and the recommendation from the affected department(s). The Human Resources Director may request additional information deemed necessary to make a recommendation to the Civil Service Commission. The decision of the Civil Service Commission is final.