

**Effective 5/5/2021**

**Chapter 17**  
**Utah State Personnel Management Act**

**Part 1**  
**General Provisions**

**63A-17-101 Title.**

This chapter is known as the "Utah State Personnel Management Act."

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-102 Definitions.**

As used in this chapter:

- (1) "Agency" means any department or unit of Utah state government with authority to employ personnel.
- (2) "Career service" means positions under schedule B as defined in Section 63A-17-301.
- (3) "Career service employee" means an employee who has successfully completed a probationary period of service in a position covered by the career service.
- (4) "Career service status" means status granted to employees who successfully complete probationary periods for competitive career service positions.
- (5) "Classified service" means those positions subject to the classification and compensation provisions of Section 63A-17-307.
- (6) "Controlled substance" means controlled substance as defined in Section 58-37-2.
- (7)
  - (a) "Demotion" means a disciplinary action resulting in a reduction of an employee's current actual wage.
  - (b) "Demotion" does not mean:
    - (i) a nondisciplinary movement of an employee to another position without a reduction in the current actual wage; or
    - (ii) a reclassification of an employee's position under the provisions of Subsection 63A-17-307(3) and rules made by the department.
- (8) "Director" means the director of the division.
- (9) "Disability" means a physical or mental disability as defined and protected under the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.
- (10) "Division" means the Division of Human Resource Management, created in Section 63A-17-105.
- (11) "Employee" means any individual in a paid status covered by the career service or classified service provisions of this chapter.
- (12) "Examining instruments" means written or other types of proficiency tests.
- (13) "Human resource function" means those duties and responsibilities specified:
  - (a) under Section 63A-17-106;
  - (b) under rules of the division; and
  - (c) under other state or federal statute.
- (14) "Market comparability adjustment" means a salary range adjustment determined necessary through a market survey of salary data and other relevant information.

- (15) "Probationary employee" means an employee serving a probationary period in a career service position but who does not have career service status.
- (16) "Probationary period" means that period of time determined by the division that an employee serves in a career service position as part of the hiring process before career service status is granted to the employee.
- (17) "Probationary status" means the status of an employee between the employee's hiring and the granting of career service status.
- (18) "Structure adjustment" means a division modification of salary ranges.
- (19) "Temporary employee" means career service exempt employees described in Subsection 63A-17-301(1)(r).
- (20) "Total compensation" means salaries and wages, bonuses, paid leave, group insurance plans, retirement, and all other benefits offered to state employees as inducements to work for the state.

Amended by Chapter 209, 2022 General Session

**63A-17-103 Principles guiding interpretation of chapter and adoption of rules -- Merit principles.**

- (1) The division shall establish a career service system designed in a manner that will provide for the effective implementation of the following merit principles:
  - (a) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
  - (b) providing for equitable and competitive compensation;
  - (c) training employees as needed to assure high-quality performance;
  - (d) retaining employees on the basis of the adequacy of their performance and separating employees whose inadequate performance cannot be corrected;
  - (e) fair treatment of applicants and employees in all aspects of human resource administration without regard to race, color, religion, sex, national origin, political affiliation, age, or disability, and with proper regard for their privacy and constitutional rights as citizens;
  - (f) providing information to employees regarding their political rights and the prohibited practices under the Hatch Act; and
  - (g) providing a formal procedure for advancing grievances of employees:
    - (i) without discrimination, coercion, restraint, or reprisal; and
    - (ii) in a manner that is fair, expeditious, and inexpensive for the employee and the agency.
- (2) The career service system described in Subsection (1) may not prescribe a minimum educational requirement for employment, except when a minimum educational qualification is legally required to perform the duties of the position.
- (3) As part of the career service system described in Subsection (1), the department shall:
  - (a) consider comparable experience or ability as equal to education in determining a candidate's satisfaction of minimum qualifications, except when a minimum educational qualification is legally required to perform the duties of the position; and
  - (b) ensure that position descriptions and job postings published by agencies for career service positions are based on the specific skills and competencies required to perform those jobs.
- (4) Within existing resources, the department shall create supporting materials that may be used by a political subdivision that chooses to implement competency-based hiring principles that are the same as or similar to those principles described in Subsections (2) and (3).

- (5) The principles in Subsections (1) through (3) shall govern interpretation and implementation of this chapter.

Amended by Chapter 53, 2021 General Session

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-104 Discriminatory or prohibited employment practices.**

The state, the state's officers, and employees shall be governed by the provisions of Section 34A-5-106 of the Utah Antidiscrimination Act concerning discriminatory or prohibited employment practices.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-105 Division of Human Resource Management created -- Director -- Staff.**

(1) There is created within the department, the Division of Human Resource Management.

- (2)
- (a) The division shall be administered by a director appointed by the executive director, with the approval of the governor.
  - (b) The director shall be a person with experience in human resource management and shall be accountable to the executive director for the director's performance in office.
- (3) The director shall advise the governor on human resource matters.

Renumbered and Amended by Chapter 344, 2021 General Session

***Superseded 7/1/2023***

**63A-17-106 Responsibilities of the director.**

- (1) As used in this section, "miscarriage" means the spontaneous or accidental loss of a fetus, regardless of gestational age or the duration of the pregnancy.
- (2) The director shall have full responsibility and accountability for the administration of the statewide human resource management system.
- (3) Except as provided in Section 63A-17-201, an agency may not perform human resource functions without the consent of the director.
- (4) Statewide human resource management rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall take precedence if there is a conflict with agency rules, policies, or practices.
- (5) The division may operate as an internal service fund agency in accordance with Section 63J-1-410 for the human resource functions the division provides.
- (6) The director shall:
  - (a) develop, implement, and administer a statewide program of human resource management that will:
    - (i) aid in the efficient execution of public policy;
    - (ii) foster careers in public service for qualified employees; and
    - (iii) render assistance to state agencies in performing their missions;
  - (b) design and administer the state pay plan;
  - (c) design and administer the state classification system and procedures for determining schedule assignments;
  - (d) design and administer the state recruitment and selection system;

- (e) administer agency human resource practices and ensure compliance with federal law, state law, and state human resource rules, including equal employment opportunity;
  - (f) consult with agencies on decisions concerning employee corrective action and discipline;
  - (g) maintain central personnel records;
  - (h) perform those functions necessary to implement this chapter unless otherwise assigned or prohibited;
  - (i) perform duties assigned by the governor, executive director, or statute;
  - (j) make rules for human resource management, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (k) establish and maintain a management information system that will furnish the governor, the Legislature, and agencies with current information on authorized positions, payroll, and related matters concerning state human resources;
  - (l) conduct research and planning activities to:
    - (i) determine and prepare for future state human resource needs;
    - (ii) develop methods for improving public human resource management; and
    - (iii) propose needed policy changes to the governor;
  - (m) study the character, causes, and extent of discrimination in state employment and develop plans for its elimination through programs consistent with federal and state laws governing equal employment opportunity in employment;
  - (n) when requested by charter schools or counties, municipalities, and other political subdivisions of the state, provide technical service, training recommendations, or advice on human resource management at a charge determined by the director;
  - (o) establish compensation policies and procedures for early voluntary retirement;
  - (p) confer with the heads of other agencies about human resource policies and procedures;
  - (q) submit an annual report to the executive director, the governor, and the Legislature; and
  - (r) assist with the development of a vacant position report required under Subsection 63J-1-201(2)(b)(vi).
- (7)
- (a) After consultation with the executive director, the governor, and the heads of other agencies, the director shall establish and coordinate statewide training programs, including and subject to available funding, the development of manager and supervisor training.
  - (b) The programs developed under this Subsection (7) shall have application to more than one agency.
  - (c) The division may not establish training programs that train employees to perform highly specialized or technical jobs and tasks.
  - (d) The division shall ensure that any training program described in this Subsection (7) complies with Title 63G, Chapter 22, State Training and Certification Requirements.
- (8)
- (a)
    - (i) The division may collect fees for training as authorized by this Subsection (8).
    - (ii) Training funded from General Fund appropriations shall be treated as a separate program within the department budget.
    - (iii) All money received from fees under this section will be accounted for by the department as a separate user driven training program.
    - (iv) The user training program includes the costs of developing, procuring, and presenting training and development programs, and other associated costs for these programs.
  - (b)
    - (i) Funds remaining at the end of the fiscal year in the user training program are nonlapsing.

- (ii) Each year, as part of the appropriations process, the Legislature shall review the amount of nonlapsing funds remaining at the end of the fiscal year and may, by statute, require the department to lapse a portion of the funds.
- (9) Rules described in Subsection (6)(j) shall provide for at least three work days of paid bereavement leave for an employee:
  - (a) following the end of the employee's pregnancy by way of miscarriage or stillbirth; or
  - (b) following the end of another individual's pregnancy by way of a miscarriage or stillbirth, if:
    - (i) the employee is the individual's spouse or partner;
    - (ii)
      - (A) the employee is the individual's former spouse or partner; and
      - (B) the employee would have been a biological parent of a child born as a result of the pregnancy;
    - (iii) the employee provides documentation to show that the individual intended for the employee to be an adoptive parent, as that term is defined in Section 78B-6-103, of a child born as a result of the pregnancy; or
    - (iv) under a valid gestational agreement in accordance with Title 78B, Chapter 15, Part 8, Gestational Agreement, the employee would have been a parent of a child born as a result of the pregnancy.

Amended by Chapter 166, 2022 General Session

Amended by Chapter 169, 2022 General Session

Amended by Chapter 177, 2022 General Session

***Effective 7/1/2023***

**63A-17-106 Responsibilities of the director.**

- (1) As used in this section, "miscarriage" means the spontaneous or accidental loss of a fetus, regardless of gestational age or the duration of the pregnancy.
- (2) The director shall have full responsibility and accountability for the administration of the statewide human resource management system.
- (3) Except as provided in Section 63A-17-201, an agency may not perform human resource functions without the consent of the director.
- (4) Statewide human resource management rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall take precedence if there is a conflict with agency rules, policies, or practices.
- (5) The division may operate as an internal service fund agency in accordance with Section 63J-1-410 for the human resource functions the division provides.
- (6) The director shall:
  - (a) develop, implement, and administer a statewide program of human resource management that will:
    - (i) aid in the efficient execution of public policy;
    - (ii) foster careers in public service for qualified employees; and
    - (iii) render assistance to state agencies in performing their missions;
  - (b) design and administer the state pay plan;
  - (c) design and administer the state classification system and procedures for determining schedule assignments;
  - (d) design and administer the state recruitment and selection system;
  - (e) administer agency human resource practices and ensure compliance with federal law, state law, and state human resource rules, including equal employment opportunity;

- (f) consult with agencies on decisions concerning employee corrective action and discipline;
  - (g) maintain central personnel records;
  - (h) perform those functions necessary to implement this chapter unless otherwise assigned or prohibited;
  - (i) perform duties assigned by the governor, executive director, or statute;
  - (j) make rules for human resource management, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (k) establish and maintain a management information system that will furnish the governor, the Legislature, and agencies with current information on authorized positions, payroll, and related matters concerning state human resources;
  - (l) conduct research and planning activities to:
    - (i) determine and prepare for future state human resource needs;
    - (ii) develop methods for improving public human resource management; and
    - (iii) propose needed policy changes to the governor;
  - (m) study the character, causes, and extent of discrimination in state employment and develop plans for its elimination through programs consistent with federal and state laws governing equal employment opportunity in employment;
  - (n) when requested by charter schools or counties, municipalities, and other political subdivisions of the state, provide technical service, training recommendations, or advice on human resource management at a charge determined by the director;
  - (o) establish compensation policies and procedures for early voluntary retirement;
  - (p) confer with the heads of other agencies about human resource policies and procedures;
  - (q) submit an annual report to the executive director, the governor, and the Legislature; and
  - (r) assist with the development of a vacant position report required under Subsection 63J-1-201(2)(b)(vi).
- (7)
- (a) After consultation with the executive director, the governor, and the heads of other agencies, the director shall establish and coordinate statewide training programs, including training described in Subsection (7)(e).
  - (b) The programs developed under this Subsection (7) shall have application to more than one agency.
  - (c) The division may not establish training programs that train employees to perform highly specialized or technical jobs and tasks.
  - (d) The division shall ensure that any training program described in this Subsection (7) complies with Title 63G, Chapter 22, State Training and Certification Requirements.
  - (e)
    - (i) As used in this Subsection (7)(e):
      - (A) "Employee" means the same as that term is defined in Section 63A-17-112.
      - (B) "Supervisor" means an individual in a position at an agency, as defined in Section 63A-17-112, that requires the regular supervision and performance evaluation of an employee.
    - (ii) A supervisor shall attend the training:
      - (A) within six months of being promoted or hired to the position of supervisor; and
      - (B) at least annually.
    - (iii) Training attendance and the effective use of training information and principles shall be considered in an evaluation of a supervisor's job performance.
    - (iv) The training shall include:

- (A) effective employee management and evaluation methods based on the pay for performance management system described in Section 63A-17-112;
  - (B) instruction to improve supervisor and employee communications;
  - (C) best practices for recognizing and retaining high-performing employees;
  - (D) best practices for addressing poor-performing employees; and
  - (E) any other information and principles identified by the division to improve management or organizational effectiveness.
- (8)
- (a)
    - (i) The division may collect fees for training as authorized by this Subsection (8).
    - (ii) Training funded from General Fund appropriations shall be treated as a separate program within the department budget.
    - (iii) All money received from fees under this section will be accounted for by the department as a separate user driven training program.
    - (iv) The user training program includes the costs of developing, procuring, and presenting training and development programs, and other associated costs for these programs.
  - (b)
    - (i) Funds remaining at the end of the fiscal year in the user training program are nonlapsing.
    - (ii) Each year, as part of the appropriations process, the Legislature shall review the amount of nonlapsing funds remaining at the end of the fiscal year and may, by statute, require the department to lapse a portion of the funds.
- (9) Rules described in Subsection (6)(j) shall provide for at least three work days of paid bereavement leave for an employee:
- (a) following the end of the employee's pregnancy by way of miscarriage or stillbirth; or
  - (b) following the end of another individual's pregnancy by way of a miscarriage or stillbirth, if:
    - (i) the employee is the individual's spouse or partner;
    - (ii)
      - (A) the employee is the individual's former spouse or partner; and
      - (B) the employee would have been a biological parent of a child born as a result of the pregnancy;
    - (iii) the employee provides documentation to show that the individual intended for the employee to be an adoptive parent, as that term is defined in Section 78B-6-103, of a child born as a result of the pregnancy; or
    - (iv) under a valid gestational agreement in accordance with Title 78B, Chapter 15, Part 8, Gestational Agreement, the employee would have been a parent of a child born as a result of the pregnancy.

Amended by Chapter 166, 2022 General Session  
Amended by Chapter 169, 2022 General Session  
Amended by Chapter 177, 2022 General Session  
Amended by Chapter 209, 2022 General Session

**63A-17-107 Services and fees -- Submission to rate committee.**

The director shall, before charging a rate for services provided by the division's internal service fund to an executive branch agency:

- (1) submit the proposed rates and cost analysis to the rate committee established in Section 63A-1-114; and
- (2) obtain the approval of the Legislature as required under Section 63J-1-410.

Amended by Chapter 169, 2022 General Session

**63A-17-108 Severability of provisions -- Compliance with requirements for federally aided programs.**

- (1) If any provision of this chapter or of any regulation or order issued thereunder or the application of any provision of this chapter to any person or circumstance is held invalid, the remainder of this chapter and the application of provision of this chapter or regulation or orders issued under it to persons or circumstances other than those to which it is held invalid shall still be regarded as having the force and effect of law.
- (2) If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter shall be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings shall not affect the operation of the remainder of this chapter in its application to the agencies concerned.
- (3) Notwithstanding any provisions in this chapter to the contrary, no regulation shall be adopted which would deprive the state or any of its departments or institutions of federal grants or other forms of financial assistance, and the rules and regulations promulgated hereunder shall include standards, provisions, terms, and conditions for personnel engaged in the administration of federally aided programs, which shall, in all respects, comply with the necessary requirements for a qualified human resource system under the standards applicable to personnel engaged in the administration of federally aided programs.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-109 Study of wildland fire related pay plans.**

By no later than June 30, 2021, the division shall complete a comprehensive comparison of federal, state, and municipal wildland fire agencies or departments to recommend whether salary ranges should be adjusted for state employed wildland firefighters.

Enacted by Chapter 97, 2021 General Session

**63A-17-110 State pay plans for DNR peace officers and wildland firefighters.**

- (1) As used in this section:
  - (a) "DNR peace officer" means an employee of the Department of Natural Resources who is designated as a peace officer by law.
  - (b) "Wildland firefighter" means an employee of the Division of Forestry, Fire, and State Lands who is:
    - (i) trained in firefighter techniques; and
    - (ii) assigned to a position of hazardous duty.
- (2) The director shall:
  - (a) establish a specialized state pay plan for DNR peace officers and wildland firefighters that:
    - (i) meets the requirements of Section 63A-17-307;
    - (ii) distinguishes the salary range for each DNR peace officer and wildland firefighter classification;
    - (iii) includes for each DNR peace officer and wildland firefighter classification:
      - (A) the minimum qualifications; and
      - (B) any training requirements; and



- (iv) provides standards for:
  - (A) performance evaluation; and
  - (B) promotion; and
- (b) include, in the plan described in Subsection 63A-17-307(5), recommendations on funding and salary increases for DNR peace officers and wildland firefighters.

Amended by Chapter 169, 2022 General Session

Amended by Chapter 274, 2022 General Session

**63A-17-111 Teleworking progress report.**

- (1) As used in this section:
  - (a) "Mandatory action day" means a day where notice has been issued at least 48 hours in advance by the director of the Division of Air Quality that the concentration of air pollutants measured in a county are predicted to reach or exceed levels of air pollution that are unhealthy for sensitive groups.
  - (b) "Special circumstance day" means a day where predicted heavy snowfall or other situations pose a risk to employee safety or employee health as determined by the Governor's Office of Planning and Budget or a designee of the Governor's Office of Planning and Budget.
  - (c) "Surge telework eligible" means all employment positions identified as telework eligible and employment positions identified as able to telework temporarily for mandatory action days or special circumstance days.
  - (d) "Surge teleworking" means an employee who temporarily teleworks on a mandatory action day or a special circumstance day.
  - (e) "Telework" or "Teleworking" means an employee working from home, or from an approved worksite other than the location from which the employee would otherwise work, through the use of a computer, the Internet, a telephone, or other technology to complete work-related duties and maintain contact with colleagues, clients, or a central office as needed.
- (2)
  - (a) The division shall assist each state agency with identifying positions that are surge telework eligible.
  - (b) The division may identify and distribute to each state agency strategies and best practices to increase the use of teleworking by the agency's employees during mandatory action days and special circumstance days.
- (3) The Governor's Office of Planning and Budget or a designee of the Governor's Office of Planning and Budget shall inform each state agency in a timely manner of mandatory action days and special circumstance days.
- (4) On or before October 1 of each year, the division shall provide a written report to the Economic Development and Workforce Services Interim Committee describing:
  - (a) the number of employees and the percentage of employees from each agency that are identified as telework eligible and surge telework eligible;
  - (b) except for the initial written report on or before October 1, 2021, the number of employees and the percentage of employees from each agency that have teleworked during mandatory action days and special circumstance days during the previous fiscal year;
  - (c) for each agency that has not met the target goal of 90% of surge telework eligible employees teleworking on mandatory action days or special circumstance days, impediments to achieving the target goals and recommended strategies to achieve the target goals in the future; and

- (d) for each agency, recommendations for any actions by the Legislature to increase the number and percentage of surge telework eligible employees.

Enacted by Chapter 192, 2021 General Session

**Effective 7/1/2023**

**63A-17-112 Pay for performance management system -- Employees paid for performance.**

(1) As used in this section:

(a)

- (i) "Agency" means, except as provided in Subsection (1)(a)(ii), the same as that term is defined in Section 63A-17-102.
- (ii) "Agency" does not include the State Board of Education, the Office of the State Treasurer, Office of the State Auditor, Office of the State Attorney General, Utah System of Higher Education, the Legislature, the judiciary, or, as defined in Section 63E-1-102, an independent entity.

(b)

- (i) "Employee" means an employee of an agency.
- (ii) "Employee" does not include an individual in a schedule AB, as described in Section 63A-17-301, position.

(c) "Pay for performance" means a plan for incentivizing an employee for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets for the employee are determined, measurement procedures are in place, and specific incentives are provided when goals and targets are met.

(d) "Pay for performance management system" means the system described in Subsection (2).

(2) The division shall establish and, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for the administration of a pay for performance management system.

(3) The pay for performance management system shall include:

- (a) guidelines and criteria for an agency to adopt pay for performance policies and administer pay based on an employee's performance in furtherance of the agency's mission;
- (b) employee performance ratings;
- (c) requirements for written employee performance standards and expectations;
- (d) supervisor verbal and written feedback based on the standards of performance and behavior outlined in an employee's performance plan; and
- (e) quarterly written evaluation of an employee's performance.

(4) In consultation with the division, no later than July 1, 2023, each agency shall:

- (a) adopt pay for performance policies based on the performance management system; and
- (b) subject to available funds and as necessary, adjust an employee's wage to reflect:
  - (i) subject to Subsection (5), for a classified service employee, the salary range of the position classified plan for the employee's position; and
  - (ii) an increase, decrease, or no change in the employee's wage:
    - (A) commensurate to an employee's performance as reflected by the employee's evaluation conducted in accordance with the pay for performance management system; and
    - (B) in an amount that is in accordance with the guidelines and criteria established for a wage change in the pay for performance management system.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules authorizing a classified service employee to receive a wage that exceeds the salary

range of the classified service employee's position classified plan if warranted based on the classified employee's performance rating.

Enacted by Chapter 209, 2022 General Session

## **Part 2 Offices and Facilities**

### **63A-17-201 Division field offices.**

- (1) The director may establish a field office in an agency.
- (2) The director may assign an employee of the division to act as field office staff.
- (3) The director and agency head shall sign an agreement, to be reviewed annually, that specifies:
  - (a) the services to be provided by the division;
  - (b) the use of agency facilities and equipment by the field office;
  - (c) protocols to resolve discrepancies between agency practice and division policy; and
  - (d) any other issue necessary for the proper functioning of the field office.
- (4) Unless otherwise provided for in the field office agreement, the agency shall:
  - (a) assign responsibilities and duties to its employees;
  - (b) conduct performance appraisals;
  - (c) discipline the agency's employees in consultation with the division; and
  - (d) maintain individual personnel records.

Renumbered and Amended by Chapter 344, 2021 General Session

### **63A-17-202 Use of facilities -- Field office facilities cost allocation.**

- (1) An agency or a political subdivision of the state shall allow the division to use public buildings under the agency's or the political subdivision's control, and furnish heat, light, and furniture, for any examination, training, hearing, or investigation authorized by this chapter.
- (2) An agency or political subdivision that allows the division to use a public building under Subsection (1) shall pay the cost of the division's use of the public building.

Amended by Chapter 169, 2022 General Session

## **Part 3 Classification and Career Service**

### **63A-17-301 Career service -- Exempt positions -- Schedules for civil service positions -- Coverage of career service provisions.**

- (1) Except as provided in Subsection (3)(d), the following positions are exempt from the career service provisions of this chapter and are designated under the following schedules:
  - (a) schedule AA includes the governor, members of the Legislature, and all other elected state officers;
  - (b) schedule AB includes appointed executives and board or commission executives enumerated in Section 67-22-2;
  - (c) schedule AC includes all employees and officers in:

- (i) the office and at the residence of the governor;
- (ii) the Public Lands Policy Coordinating Office;
- (iii) the Office of the State Auditor; and
- (iv) the Office of the State Treasurer;
- (d) schedule AD includes employees who:
  - (i) are in a confidential relationship to an agency head or commissioner; and
  - (ii) report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent;
- (e) schedule AE includes each employee of the State Board of Education that the State Board of Education designates as exempt from the career service provisions of this chapter;
- (f) schedule AG includes employees in the Office of the Attorney General who are under their own career service pay plan under Sections 67-5-7 through 67-5-13;
- (g) schedule AH includes:
  - (i) teaching staff of all state institutions; and
  - (ii) employees of the Utah Schools for the Deaf and the Blind who are:
    - (A) educational interpreters as classified by the division; or
    - (B) educators as defined by Section 53E-8-102;
- (h) schedule AN includes employees of the Legislature;
- (i) schedule AO includes employees of the judiciary;
- (j) schedule AP includes all judges in the judiciary;
- (k) schedule AQ includes:
  - (i) members of state and local boards and councils appointed by the governor and governing bodies of agencies;
  - (ii) a water commissioner appointed under Section 73-5-1;
  - (iii) other local officials serving in an ex officio capacity; and
  - (iv) officers, faculty, and other employees of state universities and other state institutions of higher education;
- (l) schedule AR includes employees in positions that involve responsibility:
  - (i) for determining policy;
  - (ii) for determining the way in which a policy is carried out; or
  - (iii) of a type not appropriate for career service, as determined by the agency head with the concurrence of the director;
- (m) schedule AS includes any other employee:
  - (i) whose appointment is required by statute to be career service exempt;
  - (ii) whose agency is not subject to this chapter; or
  - (iii) whose agency has authority to make rules regarding the performance, compensation, and bonuses for its employees;
- (n) schedule AT includes employees of the Division of Technology Services, designated as executive/professional positions by the director of the Division of Technology Services with the concurrence of the director of the division;
- (o) schedule AU includes patients and inmates employed in state institutions;
- (p) employees of the Department of Workforce Services, designated as schedule AW:
  - (i) who are temporary employees that are federally funded and are required to work under federally qualified merit principles as certified by the director; or
  - (ii) for whom substantially all of their work is repetitive, measurable, or transaction based, and who voluntarily apply for and are accepted by the Department of Workforce Services to work in a pay for performance program designed by the Department of Workforce Services with the concurrence of the director of the division;

- (q) subject to Subsection (6), schedule AX includes employees in positions that:
    - (i) require the regular supervision and performance evaluation of one or more other employees; and
    - (ii) are not designated exempt from career service under any other schedule described in this Subsection (1); and
  - (r) for employees in positions that are temporary, seasonal, time limited, funding limited, or variable hour in nature, under schedule codes and parameters established by the division by administrative rule.
- (2) The civil service shall consist of two schedules as follows:
- (a)
    - (i) Schedule A is the schedule consisting of positions under Subsection (1).
    - (ii) Removal from any appointive position under schedule A, unless otherwise regulated by statute, is at the pleasure of the appointing officers without regard to tenure.
  - (b) Schedule B is the competitive career service schedule, consisting of:
    - (i) all positions filled through competitive selection procedures as defined by the director; or
    - (ii) positions filled through a division approved on-the-job examination intended to appoint a qualified person with a disability, or a veteran in accordance with Title 71, Chapter 10, Veterans Preference.
- (3)
- (a) The director, after consultation with the heads of concerned executive branch departments and agencies and with the approval of the governor, shall allocate positions to the appropriate schedules under this section.
  - (b) Agency heads shall make requests and obtain approval from the director before changing the schedule assignment and tenure rights of any position.
  - (c) Unless the director's decision is reversed by the governor, when the director denies an agency's request, the director's decision is final.
  - (d)
    - (i) An agency may file with the division a request to reschedule a position that would otherwise be scheduled as a schedule A position.
    - (ii) The division shall review a request filed under Subsection (3)(d)(i) and approve the request only if the exception is necessary to conform to a requirement imposed as a condition precedent to receipt of federal funds or grant of a tax benefit under federal law.
- (4)
- (a) Compensation for employees of the Legislature shall be established by the directors of the legislative offices in accordance with Section 36-12-7.
  - (b) Compensation for employees of the judiciary shall be established by the state court administrator in accordance with Section 78A-2-107.
  - (c) Compensation for officers, faculty, and other employees of state universities and institutions of higher education shall be established as provided in Title 53B, Chapter 1, Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of Higher Education.
  - (d) Unless otherwise provided by law, compensation for all other schedule A employees shall be established by their appointing authorities, within ranges approved by, and after consultation with the director.
- (5) An employee who is in a position designated schedule AC and who holds career service status on June 30, 2010, shall retain the career service status if the employee:
- (a) remains in the position that the employee is in on June 30, 2010; and

- (b) does not elect to convert to career service exempt status in accordance with a rule made by the division.
- (6)
  - (a) An employee who is hired for a schedule AX position on or after July 1, 2022, is exempt from career service status.
  - (b) An employee who before July 1, 2022, is a career service employee employed in a schedule B position that is rescheduled to a schedule AX position on July 1, 2022, shall maintain the employee's career service status for the duration of the employee's employment in the same position unless the employee voluntarily converts to career service exempt status before July 1, 2023.
  - (c)
    - (i) Subject to Subsection (6)(c)(ii), an employee is exempt from career service status if:
      - (A) before July 1, 2022, the employee was a probationary employee in a schedule B position and had not completed the probationary period; and
      - (B) on July 1, 2022, the schedule B position in which the probationary employee is employed is rescheduled as a scheduled AX position.
    - (ii) An employee described in Subsection (6)(c)(i):
      - (A) is not a probationary employee on or after July 1, 2022; and
      - (B) is exempt from career service status on and after July 1, 2022, unless the employee changes employment to a schedule B position.
  - (d) The division shall disseminate to each employee described in Subsection (6)(b) information on financial and other incentives for voluntary conversion to career-service exempt status.
  - (e) An agency, as defined in Section 63A-17-112, may adopt a policy, created in consultation with the division, for agency review of recommendations that schedule AX employees be suspended, demoted, or dismissed from employment.

Amended by Chapter 209, 2022 General Session

**63A-17-302 Implementation of exempt status for Schedule AD and AR employees.**

- (1) As used in this section, "appointee" means:
  - (a) a deputy director;
  - (b) a division director;
  - (c) any assistant directors and administrative assistants who report directly to a department head, deputy director, or their equivalent; and
  - (d) any other person whose appointment is required by law to be approved by the governor.
- (2) After the effective date of this chapter, any new appointee is a merit exempt employee.
- (3) Notwithstanding the requirements of this chapter, any appointee who is currently a nonexempt employee does not lose that nonexempt status because of this chapter.
- (4) The division shall develop financial and other incentives to encourage appointees who are nonexempt to voluntarily convert to merit exempt status.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-303 Longevity salary increases.**

- (1) Except for those employees in schedules AB and AN, as provided under Section 63A-17-301, and employees described in Subsection 63A-17-301(1)(q), an employee shall receive an increase in salary of 2.75% if that employee:
  - (a) holds a position under schedule A or B as provided under Section 63A-17-301;

- (b) has reached the maximum of the salary range in the position classification;
  - (c) has been employed with the state for eight years; and
  - (d) is rated eligible in job performance under guidelines established by the executive director.
- (2) Any employee who meets the criteria under Subsection (1) is entitled to the same increase in salary for each additional three years of employment if the employee maintains the eligibility standards established by the division.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-304 Promotion -- Reclassification -- Market adjustment.**

- (1)
- (a) If an employee is promoted or the employee's position is reclassified to a higher salary range maximum, the agency shall place the employee within the new range of the position.
  - (b) An agency may not set an employee's salary:
    - (i) higher than the maximum in the new salary range; or
    - (ii) lower than the minimum in the new salary range of the position.
- (2) An agency shall adjust the salary range for an employee whose salary range is approved by the Legislature for a market comparability adjustment consistent with Subsection 63A-17-307(5)(b)
- (i):
- (a) at the beginning of the next fiscal year; and
  - (b) consistent with appropriations made by the Legislature.
- (3) Division-initiated revisions in the state classification system that result in consolidation or reduction of class titles or broadening of pay ranges:
- (a) may not be regarded as a reclassification of the position or promotion of the employee; and
  - (b) are exempt from the provisions of Subsection (1).

Amended by Chapter 169, 2022 General Session

**63A-17-305 Appointments to Schedule B positions -- Examinations -- Hiring lists -- Probationary service -- Dismissal.**

- (1) Each appointment to a position under Schedule B shall be made from hiring lists of applicants who have been selected by competitive procedures as defined by the director.
- (2) The director shall publicly announce information regarding career service positions:
- (a) for periods of time to be determined by the director; and
  - (b) in a manner designed to attract the highest number of qualified applicants.
- (3) The director shall make rules establishing standards for the development, approval, and implementation of examining processes, including establishing a department approved on the job examination to appoint a qualified person with a disability.
- (4) Applicants for employment to Schedule B positions shall be eligible for appointment based upon rules established by the director.
- (5)
- (a) The agency head shall make appointments to fill vacancies from hiring lists for probationary periods as defined by rule.
  - (b) The director shall make rules establishing probationary periods.
- (6) A person serving a probationary period may not use the grievance procedures provided in this chapter and in Title 67, Chapter 19a, Grievance Procedures, and may be dismissed at any time by the appointing officer without hearing or appeal.

- (7) Career service status shall be granted upon the successful completion of the probationary period.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-306 Dismissals and demotions -- Grounds -- Disciplinary action -- Procedure -- Reductions in force.**

- (1) A career service employee may be dismissed or demoted:
  - (a) to advance the good of the public service; or
  - (b) for just causes, including inefficiency, incompetency, failure to maintain skills or adequate performance levels, insubordination, disloyalty to the orders of a superior, misfeasance, malfeasance, or nonfeasance in office.
- (2) An employee may not be dismissed because of race, sex, age, disability, national origin, religion, political affiliation, or other nonmerit factor including the exercise of rights under this chapter.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall make rules governing the procedural and documentary requirements of disciplinary dismissals and demotions.
- (4) If an agency head finds that a career service employee is charged with aggravated misconduct or that retention of a career service employee would endanger the peace and safety of others or pose a grave threat to the public interest, the employee may be suspended pending the administrative appeal to the department head as provided in Subsection (5).
- (5)
  - (a) A career service employee may not be demoted or dismissed unless the department head or designated representative has complied with this subsection.
  - (b) The department head or designated representative notifies the employee in writing of the reasons for the dismissal or demotion.
  - (c) The employee has no less than five working days to reply and have the reply considered by the department head.
  - (d) The employee has an opportunity to be heard by the department head or designated representative.
  - (e) Following the hearing, the employee may be dismissed or demoted if the department head finds adequate cause or reason.
- (6)
  - (a) Reductions in force required by inadequate funds, change of workload, or lack of work are governed by retention points established by the director.
  - (b) Under those circumstances:
    - (i) The agency head shall designate the category of work to be eliminated, subject to review by the director.
    - (ii) Temporary and probationary employees shall be separated before any career service employee.
    - (iii)
      - (A) When more than one career service employee is affected, the employees shall be separated in the order of their retention points, the employee with the lowest points to be discharged first.
      - (B) Retention points for each career service employee shall be computed according to rules established by the director, allowing appropriate consideration for proficiency and seniority



in state government, including any active duty military service fulfilled subsequent to original state appointment.

(c)

- (i) A career service employee who is separated in a reduction in force under this section shall be given preferential consideration when applying for a career service position.
- (ii) Preferential consideration under Subsection (6)(c)(i) applies only until the former career service employee accepts a career service position.
- (iii) The director shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, concerning the manner of granting preferential consideration under Subsection (6)(c)(i).

(d)

- (i) An employee separated due to a reduction in force may appeal to the department head for an administrative review.
- (ii) The notice of appeal must be submitted within 20 working days after the employee's receipt of written notification of separation.
- (iii) The employee may appeal the decision of the department head according to the grievance and appeals procedure of this chapter and Title 67, Chapter 19a, Grievance Procedures.

Amended by Chapter 169, 2022 General Session

***Superseded 7/1/2023***

**63A-17-307 State pay plans -- Applicability of section -- Exemptions -- Duties of director.**

(1)

- (a) This section, and the rules made by the division under this section, apply to each career and noncareer employee not specifically exempted under Subsection (2).
- (b) If not exempted under Subsection (2), an employee is considered to be in classified service.

(2) The following employees are exempt from this section:

- (a) members of the Legislature and legislative employees;
- (b) members of the judiciary and judicial employees;
- (c) elected members of the executive branch and employees designated as schedule AC as provided under Subsection 63A-17-301(1)(c);
- (d) employees of the State Board of Education;
- (e) officers, faculty, and other employees of state institutions of higher education;
- (f) employees in a position that is specified by statute to be exempt from this Subsection (2);
- (g) employees in the Office of the Attorney General;
- (h) department heads and other persons appointed by the governor under statute;
- (i) schedule AS employees as provided under Subsection 63A-17-301(1)(m);
- (j) department deputy directors, division directors, and other employees designated as schedule AD as provided under Subsection 63A-17-301(1)(d);
- (k) employees that determine and execute policy designated as schedule AR as provided under Subsection 63A-17-301(1)(l);
- (l) teaching staff, educational interpreters, and educators designated as schedule AH as provided under Subsection 63A-17-301(1)(g);
- (m) temporary employees described in Subsection 63A-17-301(1)(r);
- (n) patients and inmates designated as schedule AU as provided under Subsection 63A-17-301(1)(o) who are employed by state institutions; and
- (o) members of state and local boards and councils and other employees designated as schedule AQ as provided under Subsection 63A-17-301(1)(k).

- (3)
  - (a) The director shall prepare, maintain, and revise a position classification plan for each employee position not exempted under Subsection (2) to provide equal pay for equal work.
  - (b) Classification of positions shall be based upon similarity of duties performed and responsibilities assumed, so that the same job requirements and the same salary range, subject to Section 63A-17-112, may be applied equitably to each position in the same class.
  - (c) The director shall allocate or reallocate the position of each employee in classified service to one of the classes in the classification plan.
  - (d)
    - (i) The division shall conduct periodic studies and interviews to provide that the classification plan remains reasonably current and reflects the duties and responsibilities assigned to and performed by employees.
    - (ii) The director shall determine the need for studies and interviews after considering factors such as changes in duties and responsibilities of positions or agency reorganizations.
- (4)
  - (a) With the approval of the executive director and the governor, the director shall develop and adopt pay plans for each position in classified service.
  - (b) The director shall design each pay plan to achieve, to the degree that funds permit, comparability of state salary ranges to the market using data obtained from private enterprise and other public employment for similar work.
  - (c) The director shall adhere to the following in developing each pay plan:
    - (i) each pay plan shall consist of sufficient salary ranges to:
      - (A) permit adequate salary differential among the various classes of positions in the classification plan; and
      - (B) reflect the normal growth and productivity potential of employees in that class.
    - (ii) The director shall issue rules for the administration of pay plans.
  - (d) The establishing of a salary range is a nondelegable activity and is not appealable under the grievance procedures of Part 6, Grievance Provisions, Title 67, Chapter 19a, Grievance Procedures, or otherwise.
  - (e) The director shall make rules, accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, providing for:
    - (i) agency approved salary adjustments within approved salary ranges, including an administrative salary adjustment; and
    - (ii) structure adjustments that modify salary ranges, including a cost of living adjustment or market comparability adjustment.
- (5)
  - (a) On or before October 31 of each year, the director shall submit an annual compensation plan to the executive director and the governor for consideration in the executive budget.
  - (b) The plan described in Subsection (5)(a) may include recommendations, including:
    - (i) salary increases that generally affect employees, including a general increase or merit increase;
    - (ii) salary increases that address compensation issues unique to an agency or occupation;
    - (iii) structure adjustments, including a cost of living adjustment or market comparability adjustment; or
    - (iv) changes to employee benefits.
  - (c)
    - (i)

- (A) Subject to Subsection (5)(c)(i)(B) or (C), the director shall incorporate the results of a salary survey of a reasonable cross section of comparable positions in private and public employment in the state into the annual compensation plan.
  - (B) The salary survey for a law enforcement officer, as defined in Section 53-13-103, a correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section 53-6-102, shall at minimum include the three largest political subdivisions in the state that employ, respectively, comparable positions.
  - (C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1, Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit Insurance Corporation, Federal Reserve, and National Credit Union Administration.
  - (ii) The director may cooperate with or participate in any survey conducted by other public and private employers.
  - (iii) The director shall obtain information for the purpose of constructing the survey from the Division of Workforce Information and Payment Services and shall include employer name, number of persons employed by the employer, employer contact information and job titles, county code, and salary if available.
  - (iv) The division shall acquire and protect the needed records in compliance with the provisions of Section 35A-4-312.
  - (d) The director may incorporate any other relevant information in the plan described in Subsection (5)(a), including information on staff turnover, recruitment data, or external market trends.
  - (e) The director shall:
    - (i) establish criteria to assure the adequacy and accuracy of data used to make recommendations described in this Subsection (5); and
    - (ii) when preparing recommendations use accepted methodologies and techniques similar to and consistent with those used in the private sector.
  - (f)
    - (i) Upon request and subject to Subsection (5)(f)(ii), the division shall make available foundational information used by the division or director in the drafting of a plan described in Subsection (5)(a), including:
      - (A) demographic and labor market information;
      - (B) information on employee turnover;
      - (C) salary information;
      - (D) information on recruitment; and
      - (E) geographic data.
    - (ii) The division may not provide under Subsection (5)(f)(i) information or other data that is proprietary or otherwise protected under the terms of a contract or by law.
  - (g) The governor shall:
    - (i) consider salary and structure adjustments recommended under Subsection (5)(b) in preparing the executive budget and shall recommend the method of distributing the adjustments;
    - (ii) submit compensation recommendations to the Legislature; and
    - (iii) support the recommendation with schedules indicating the cost to individual departments and the source of funds.
  - (h) If funding is approved by the Legislature in a general appropriations act, the adjustments take effect on the July 1 following the enactment unless otherwise indicated.
- (6)

- (a) The director shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the granting of incentive awards, including awards for cost saving actions, awards for commendable actions by an employee, or a market-based award to attract or retain employees.
  - (b) An agency may not grant a market-based award unless the award is previously approved by the division.
  - (c) In accordance with Subsection (6)(b), an agency requesting the division's approval of a market-based award shall submit a request and documentation, subject to Subsection (6)(d), to the division.
  - (d) In the documentation required in Subsection (6)(c), the requesting agency shall identify for the division:
    - (i) any benefit the market-based award would provide for the agency, including:
      - (A) budgetary advantages; or
      - (B) recruitment advantages;
    - (ii) a mission critical need to attract or retain unique or hard to find skills in the market; or
    - (iii) any other advantage the agency would gain through the utilization of a market-based award.
- (7)
- (a) The director shall regularly evaluate the total compensation program of state employees in the classified service.
  - (b) The division shall determine if employee benefits are comparable to those offered by other private and public employers using information from:
    - (i) a study conducted by a third-party consultant; or
    - (ii) the most recent edition of a nationally recognized benefits survey.

Amended by Chapter 169, 2022 General Session

Amended by Chapter 209, 2022 General Session

***Effective 7/1/2023***

**63A-17-307 State pay plans -- Applicability of section -- Exemptions -- Duties of director.**

- (1)
- (a) This section, and the rules made by the division under this section, apply to each career and noncareer employee not specifically exempted under Subsection (2).
  - (b) If not exempted under Subsection (2), an employee is considered to be in classified service.
- (2) The following employees are exempt from this section:
- (a) members of the Legislature and legislative employees;
  - (b) members of the judiciary and judicial employees;
  - (c) elected members of the executive branch and employees designated as schedule AC as provided under Subsection 63A-17-301(1)(c);
  - (d) employees of the State Board of Education;
  - (e) officers, faculty, and other employees of state institutions of higher education;
  - (f) employees in a position that is specified by statute to be exempt from this Subsection (2);
  - (g) employees in the Office of the Attorney General;
  - (h) department heads and other persons appointed by the governor under statute;
  - (i) schedule AS employees as provided under Subsection 63A-17-301(1)(m);
  - (j) department deputy directors, division directors, and other employees designated as schedule AD as provided under Subsection 63A-17-301(1)(d);

- (k) employees that determine and execute policy designated as schedule AR as provided under Subsection 63A-17-301(1)(l);
  - (l) teaching staff, educational interpreters, and educators designated as schedule AH as provided under Subsection 63A-17-301(1)(g);
  - (m) temporary employees described in Subsection 63A-17-301(1)(r);
  - (n) patients and inmates designated as schedule AU as provided under Subsection 63A-17-301(1)(o) who are employed by state institutions; and
  - (o) members of state and local boards and councils and other employees designated as schedule AQ as provided under Subsection 63A-17-301(1)(k).
- (3)
- (a) The director shall prepare, maintain, and revise a position classification plan for each employee position not exempted under Subsection (2) to provide equal pay for equal work.
  - (b) Classification of positions shall be based upon similarity of duties performed and responsibilities assumed, so that the same job requirements and the same salary range, subject to Section 63A-17-112, may be applied equitably to each position in the same class.
  - (c) The director shall allocate or reallocate the position of each employee in classified service to one of the classes in the classification plan.
  - (d)
    - (i) The division shall conduct periodic studies and interviews to provide that the classification plan remains reasonably current and reflects the duties and responsibilities assigned to and performed by employees.
    - (ii) The director shall determine the need for studies and interviews after considering factors such as changes in duties and responsibilities of positions or agency reorganizations.
- (4)
- (a) With the approval of the executive director and the governor, the director shall develop and adopt pay plans for each position in classified service.
  - (b) The director shall design each pay plan to achieve, to the degree that funds permit, comparability of state salary ranges to the market using data obtained from private enterprise and other public employment for similar work.
  - (c) The director shall adhere to the following in developing each pay plan:
    - (i) each pay plan shall consist of sufficient salary ranges to:
      - (A) permit adequate salary differential among the various classes of positions in the classification plan; and
      - (B) reflect the normal growth and productivity potential of employees in that class.
    - (ii) The director shall issue rules for the administration of pay plans.
  - (d) The establishing of a salary range is a nondelegable activity and is not appealable under the grievance procedures of Part 6, Grievance Provisions, Title 67, Chapter 19a, Grievance Procedures, or otherwise.
  - (e) The director shall make rules, accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, providing for:
    - (i) agency approved salary adjustments within approved salary ranges, including an administrative salary adjustment; and
    - (ii) structure adjustments that modify salary ranges, including a cost of living adjustment or market comparability adjustment.
- (5)
- (a) On or before October 31 of each year, the director shall submit an annual compensation plan to the executive director and the governor for consideration in the executive budget and to the State Employee Benefits Advisory Commission created in Section 63C-29-102.

- (b) The plan described in Subsection (5)(a) may include recommendations, including:
  - (i) salary increases that generally affect employees, including a general increase or merit increase;
  - (ii) salary increases that address compensation issues unique to an agency or occupation;
  - (iii) structure adjustments, including a cost of living adjustment or market comparability adjustment; or
  - (iv) changes to employee benefits.
- (c)
  - (i)
    - (A) Subject to Subsection (5)(c)(i)(B) or (C), the director shall incorporate the results of a salary survey of a reasonable cross section of comparable positions in private and public employment in the state into the annual compensation plan.
    - (B) The salary survey for a law enforcement officer, as defined in Section 53-13-103, a correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section 53-6-102, shall at minimum include the three largest political subdivisions in the state that employ, respectively, comparable positions.
    - (C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1, Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit Insurance Corporation, Federal Reserve, and National Credit Union Administration.
  - (ii) The director may cooperate with or participate in any survey conducted by other public and private employers.
  - (iii) The director shall obtain information for the purpose of constructing the survey from the Division of Workforce Information and Payment Services and shall include employer name, number of persons employed by the employer, employer contact information and job titles, county code, and salary if available.
  - (iv) The division shall acquire and protect the needed records in compliance with the provisions of Section 35A-4-312.
- (d) The director may incorporate any other relevant information in the plan described in Subsection (5)(a), including information on staff turnover, recruitment data, or external market trends.
- (e) The director shall:
  - (i) establish criteria to assure the adequacy and accuracy of data used to make recommendations described in this Subsection (5); and
  - (ii) when preparing recommendations use accepted methodologies and techniques similar to and consistent with those used in the private sector.
- (f)
  - (i) Upon request and subject to Subsection (5)(f)(ii), the division shall make available foundational information used by the division or director in the drafting of a plan described in Subsection (5)(a), including:
    - (A) demographic and labor market information;
    - (B) information on employee turnover;
    - (C) salary information;
    - (D) information on recruitment; and
    - (E) geographic data.
  - (ii) The division may not provide under Subsection (5)(f)(i) information or other data that is proprietary or otherwise protected under the terms of a contract or by law.
- (g) The governor shall:

- (i) consider salary and structure adjustments recommended under Subsection (5)(b) in preparing the executive budget and shall recommend the method of distributing the adjustments;
  - (ii) submit compensation recommendations to the Legislature; and
  - (iii) support the recommendation with schedules indicating the cost to individual departments and the source of funds.
- (h) If funding is approved by the Legislature in a general appropriations act, the adjustments take effect on the July 1 following the enactment unless otherwise indicated.
- (6)
- (a) The director shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the granting of incentive awards, including awards for cost saving actions, awards for commendable actions by an employee, or a market-based award to attract or retain employees.
  - (b) An agency may not grant a market-based award unless the award is previously approved by the division.
  - (c) In accordance with Subsection (6)(b), an agency requesting the division's approval of a market-based award shall submit a request and documentation, subject to Subsection (6)(d), to the division.
  - (d) In the documentation required in Subsection (6)(c), the requesting agency shall identify for the division:
    - (i) any benefit the market-based award would provide for the agency, including:
      - (A) budgetary advantages; or
      - (B) recruitment advantages;
    - (ii) a mission critical need to attract or retain unique or hard to find skills in the market; or
    - (iii) any other advantage the agency would gain through the utilization of a market-based award.
- (7)
- (a) The director shall regularly evaluate the total compensation program of state employees in the classified service.
  - (b) The division shall determine if employee benefits are comparable to those offered by other private and public employers using information from:
    - (i) a study conducted by a third-party consultant; or
    - (ii) the most recent edition of a nationally recognized benefits survey.

## **Part 4 Payroll**

### **63A-17-401 Examination of payrolls and certification of employee eligibility by the director.**

- (1) The director may examine payrolls at any time to determine conformity with this chapter and administrative rules.
- (2) No new employee shall be hired in a position covered by this chapter, and no employee shall be changed in pay, title or status, nor shall any employee be paid unless certified by the director as eligible under the provisions of or rules made pursuant to this chapter.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-402 Division provides payroll services to executive branch agencies -- Report.**

(1) As used in this section:

(a)

(i) "Executive branch entity" means a department, division, agency, board, or office within the executive branch of state government that employs a person who is paid through the central payroll system developed by the Division of Finance as of December 31, 2011.

(ii) "Executive branch entity" does not include:

- (A) the Office of the Attorney General;
- (B) the Office of the State Treasurer;
- (C) the Office of the State Auditor;
- (D) the Department of Transportation;
- (E) the Division of Technology Services;
- (F) the Department of Public Safety;
- (G) the Department of Natural Resources; or
- (H) the Utah Schools for the Deaf and the Blind.

(b)

(i) "Payroll services" means using the central payroll system as directed by the Division of Finance to:

- (A) enter and validate payroll reimbursements, which include reimbursements for mileage, a service award, and other wage types;
- (B) calculate, process, and validate a retirement;
- (C) enter a leave adjustment; and
- (D) certify payroll by ensuring an entry complies with a rule or policy adopted by the department or the Division of Finance.

(ii) "Payroll services" does not mean:

- (A) a function related to payroll that is performed by an employee of the Division of Finance;
- (B) a function related to payroll that is performed by an executive branch agency on behalf of a person who is not an employee of the executive branch agency;
- (C) the entry of time worked by an executive branch agency employee into the central payroll system; or
- (D) approval or verification by a supervisor or designee of the entry of time worked.

(2) The division shall provide payroll services to all executive branch entities.

(3) After September 19, 2012, an executive branch entity, other than the division or the Division of Finance, may not create a full-time equivalent position or part-time position, or request an appropriation to fund a full-time equivalent position or part-time position for the purpose of providing payroll services to the entity.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-403 Employee cost disclosure.**

The Division of Finance shall, at least annually, plainly disclose to all state employees the costs of compensation and benefits that are paid by the state in dollar figures.

Renumbered and Amended by Chapter 344, 2021 General Session



## Part 5 Hours and Leave

### **63A-17-501 Definitions.**

As used in this part:

- (1) "Continuing medical and life insurance benefits" means the state provided policy of medical insurance and the state provided portion of a policy of life insurance, each offered at the same:
  - (a) benefit level and the same proportion of state/member participation in the total premium costs as an active member as defined in Section 49-11-102; and
  - (b) coverage level for a member, two person, or family policy as provided to the member at the time of retirement.
- (2) "Converted sick leave" means leave that has been converted from unused sick leave in accordance with Section 63A-17-506 which may be used by an employee in the same manner as:
  - (a) annual leave;
  - (b) sick leave; or
  - (c) unused accumulated sick leave after the employee's retirement for the purchase of continuing medical and life insurance benefits under Sections 63A-17-507, 63A-17-508, and 63A-17-804.

Enacted by Chapter 344, 2021 General Session

### **63A-17-502 Overtime policies for state employees.**

- (1) As used in this section:
  - (a) "Accrued overtime hours" means:
    - (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end of the fiscal year, have not been paid and have not been taken as time off by the nonexempt state employee who accrued them; and
    - (ii) for exempt employees, overtime hours earned during an overtime year.
  - (b) "Appointed official" means:
    - (i) each department executive director and deputy director, each division director, and each member of a board or commission; and
    - (ii) any other person employed by a department who is appointed by, or whose appointment is required by law to be approved by, the governor and who:
      - (A) is paid a salary by the state; and
      - (B) who exercises managerial, policy-making, or advisory responsibility.
  - (c) "Department" means the Department of Government Operations, the Department of Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage Services, the Insurance Department, the Public Service Commission, the Labor Commission, the Department of Agriculture and Food, the Department of Human Services, the Department of Natural Resources, the Department of Transportation, the Department of Commerce, the Department of Workforce Services, the State Tax Commission, the Department of Cultural and Community Engagement, the Department of Health, the National Guard, the Department of Environmental Quality, the Department of Public Safety, the Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General, merit employees in the Office of the State Treasurer, merit employees in the Office of the

State Auditor, Department of Veterans and Military Affairs, and the Board of Pardons and Parole.

- (d) "Elected official" means any person who is an employee of the state because the person was elected by the registered voters of Utah to a position in state government.
  - (e) "Exempt employee" means a state employee who is exempt as defined by the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.
  - (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.
  - (g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq., by which a nonexempt employee elects the form of compensation the nonexempt employee will receive for overtime.
  - (h) "Nonexempt employee" means a state employee who is nonexempt as defined by the division applying FLSA requirements.
  - (i) "Overtime" means actual time worked in excess of the employee's defined work period.
  - (j) "Overtime year" means the year determined by a department under Subsection (4)(b) at the end of which an exempt employee's accrued overtime lapses.
  - (k) "State employee" means every person employed by a department who is not:
    - (i) an appointed official;
    - (ii) an elected official; or
    - (iii) a member of a board or commission who is paid only for per diem or travel expenses.
  - (l) "Uniform annual date" means the date when an exempt employee's accrued overtime lapses.
  - (m) "Work period" means:
    - (i) for all nonexempt employees, except law enforcement and hospital employees, a consecutive seven day 24 hour work period of 40 hours;
    - (ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and
    - (iii) for nonexempt law enforcement and hospital employees, the period established by each department by rule for those employees according to the requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.
- (2) Each department shall compensate each state employee who works overtime by complying with the requirements of this section.
- (3)
- (a) Each department shall negotiate and obtain a signed FLSA agreement from each nonexempt employee.
  - (b) In the FLSA agreement, the nonexempt employee shall elect either to be compensated for overtime by:
    - (i) taking time off work at the rate of one and one-half hour off for each overtime hour worked; or
    - (ii) being paid for the overtime worked at the rate of one and one-half times the rate per hour that the state employee receives for nonovertime work.
  - (c) Any nonexempt employee who elects to take time off under this Subsection (3) shall be paid for any overtime worked in excess of the cap established by the division.
  - (d) Before working any overtime, each nonexempt employee shall obtain authorization to work overtime from the employee's immediate supervisor.
  - (e) Each department shall:
    - (i) for employees who elect to be compensated with time off for overtime, allow overtime earned during a fiscal year to be accumulated; and
    - (ii) for employees who elect to be paid for overtime worked, pay them for overtime worked in the paycheck for the pay period in which the employee worked the overtime.

- (f) If a department pays a nonexempt employee for overtime, that department shall charge that payment to that department's budget.
  - (g) At the end of each fiscal year, the Division of Finance shall total all the accrued overtime hours for nonexempt employees and charge that total against the appropriate fund or subfund.
- (4)
- (a)
    - (i) Except as provided in Subsection (4)(a)(ii), each department shall compensate exempt employees who work overtime by granting them time off at the rate of one hour off for each hour of overtime worked.
    - (ii) The director of the division may grant limited exceptions to this requirement, where work circumstances dictate, by authorizing a department to pay employees for overtime worked at the rate per hour that the employee receives for nonovertime work, if that department has funds available.
  - (b)
    - (i) Each department shall:
      - (A) establish in its written human resource policies a uniform annual date for each division that is at the end of any pay period; and
      - (B) communicate the uniform annual date to its employees.
    - (ii) If any department fails to establish a uniform annual date as required by this Subsection (4), the director of the division, in conjunction with the director of the Division of Finance, shall establish the date for that department.
  - (c)
    - (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a benefit, and is not a vested right.
    - (ii) A court may not construe the overtime for exempt employees authorized by this Subsection (4) as an entitlement, a benefit, or as a vested right.
  - (d) At the end of the overtime year, upon transfer to another department at any time, and upon termination, retirement, or other situations where the employee will not return to work before the end of the overtime year:
    - (i) any of an exempt employee's overtime that is more than the maximum established by division rule lapses; and
    - (ii) unless authorized by the director of the division under Subsection (4)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by paying the employee for the overtime or by granting the employee time off for the lapsed overtime.
  - (e) Before working any overtime, each exempt employee shall obtain authorization to work overtime from the exempt employee's immediate supervisor.
  - (f) If a department pays an exempt employee for overtime under authorization from the director of the division, that department shall charge that payment to that department's budget in the pay period earned.
- (5) The division shall:
- (a) ensure that the provisions of the FLSA and this section are implemented throughout state government;
  - (b) determine, for each state employee, whether that employee is exempt, nonexempt, law enforcement, or has some other status under the FLSA;
  - (c) in coordination with modifications to the systems operated by the Division of Finance, make rules:
    - (i) establishing procedures for recording overtime worked that comply with FLSA requirements;

- (ii) establishing requirements governing overtime worked while traveling and procedures for recording that overtime that comply with FLSA requirements;
  - (iii) establishing requirements governing overtime worked if the employee is "on call" and procedures for recording that overtime that comply with FLSA requirements;
  - (iv) establishing requirements governing overtime worked while an employee is being trained and procedures for recording that overtime that comply with FLSA requirements;
  - (v) subject to the FLSA, establishing the maximum number of hours that a nonexempt employee may accrue before a department is required to pay the employee for the overtime worked;
  - (vi) subject to the FLSA, establishing the maximum number of overtime hours for an exempt employee that do not lapse; and
  - (vii) establishing procedures for adjudicating appeals of any FLSA determinations made by the division as required by this section;
- (d) monitor departments for compliance with the FLSA; and
- (e) recommend to the Legislature and the governor any statutory changes necessary because of federal government action.
- (6)
- (a) In coordination with the procedures for recording overtime worked established in rule by the division, the Division of Finance shall modify its payroll and human resource systems to accommodate those procedures.
  - (b) Notwithstanding the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, Section 63A-17-602, and Section 67-19a-301, any employee who is aggrieved by the FLSA designation made by the division as required by this section may appeal that determination to the director of the division by following the procedures and requirements established in division rule.
  - (c) Upon receipt of an appeal under this section, the director shall notify the executive director of the employee's department that the appeal has been filed.
  - (d) If the employee is aggrieved by the decision of the director, the employee shall appeal that determination to the Department of Labor, Wage and Hour Division, according to the procedures and requirements of federal law.

Amended by Chapter 447, 2022 General Session

**63A-17-503 Accumulated annual leave -- Conversion to deferred compensation plan.**

- (1) The division shall implement a program whereby an employee may, upon termination of employment or retirement, elect to convert any unused annual leave into any of the employee's designated deferred compensation accounts that:
  - (a) are sponsored by the Utah State Retirement Board; and
  - (b) are qualified under Section 401(k) or Section 457 of the Internal Revenue Code.
- (2) Any annual leave converted under Subsection (1) shall be converted into the employee's deferred compensation account at the employee's pay rate at the time of termination or retirement.
- (3) No employee may convert hours of accrued annual leave to the extent that any hours so converted would exceed the maximum amount authorized by the Internal Revenue Code for each calendar year.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-504 Accumulated annual leave -- Annual conversion to deferred compensation plan.**

- (1) If the Legislature in an annual appropriations act with accompanying intent language specifically authorizes and fully funds the estimated costs of this use, the division shall implement a program that allows an employee, in the approved calendar year, to elect to convert up to 20 hours of annual leave, in whole hour increments not to exceed \$250 in value, into any of the employee's designated deferred compensation accounts that:
  - (a) are sponsored by the Utah State Retirement Board; and
  - (b) are qualified under Section 401(k) or Section 457 of the Internal Revenue Code.
- (2) Any annual leave converted under Subsection (1) shall be:
  - (a) converted into the employee's deferred compensation account at the employee's pay rate at the time of conversion; and
  - (b) calculated in the last pay period of the leave year as determined by the Division of Finance.
- (3) An employee may not convert hours of accrued annual leave to the extent that any hours converted would:
  - (a) exceed the maximum amount authorized by the Internal Revenue Code for the calendar year; or
  - (b) cause the employee's balance of accumulated annual leave to drop below the maximum accrual limit provided by rule.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-505 Sick leave -- Definitions -- Unused sick days retirement programs -- Rulemaking.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall make rules:
  - (a) for the procedures to implement the provisions of this section through Section 63A-17-508; and
  - (b) to establish the maximum number of hours of converted sick leave an employee may accrue.
- (2) The Division of Finance shall develop and maintain a system of accounting for employee sick leave and converted sick leave as necessary to implement the provisions of this section through Section 63A-17-508.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-506 Converted sick leave.**

Converted sick leave hours that are not used prior to an employee's retirement date shall be used under the:

- (1) Unused Sick Leave Retirement Option Program I under Section 63A-17-507 if earned prior to January 1, 2006, unless the transfer is made under Subsection 63A-17-508(1)(c); or
- (2) Unused Sick Leave Retirement Option Program II under Section 63A-17-508 if earned on or after January 1, 2006.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-507 Unused Sick Leave Retirement Option Program I -- Creation -- Payout upon eligibility for allowance -- Continuing medical and life insurance benefits after retirement.**

- (1)
  - (a) There is created the "Unused Sick Leave Retirement Option Program I."

- (b) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive a retirement allowance in accordance with Title 49, Utah State Retirement and Insurance Benefit Act.
- (2) The Unused Sick Leave Retirement Option Program I provides that upon becoming eligible to receive a retirement allowance an employee who was employed by the state prior to January 1, 2006:
  - (a) receives a contribution under Subsection (3) for 25% of the employee's unused accumulated sick leave accrued prior to January 1, 2006, at the employee's rate of pay at the time of retirement; and
  - (b) may purchase additional continuing medical and life insurance benefits in accordance with Subsection (4).
- (3)
  - (a) Subject to federal requirements and limitations, the contribution under Subsection (2)(a) shall be transferred directly to the employee's defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the Utah State Retirement Board.
  - (b) If the amount calculated under Subsection (2)(a) exceeds the federal contribution limitations, the employee's unused accumulated sick leave hours representing the excess shall be used for the purchase of continuing medical and life insurance benefits under Subsection (4).
- (4)
  - (a) An employee may purchase continuing medical and life insurance benefits, at the rate of one month's coverage per policy for eight hours of unused sick leave remaining after the contribution of unused sick leave under Subsection (2)(a).
  - (b) The medical coverage level for member, two person, or family coverage that is provided to the member at the time of retirement is the maximum coverage level available to the member under this program.
  - (c) The purchase of continuing medical and life insurance benefits at the rate provided under Subsection (4)(a) may be used by the employee to extend coverage:
    - (i) until the employee reaches the age of eligibility for Medicare; or
    - (ii) if the employee has reached the age of eligibility for Medicare, continuing medical benefits for the employee's spouse may be purchased until the employee's spouse reaches the age of eligibility for Medicare.
  - (d) An employee and the employee's spouse who are or who later become eligible for Medicare may purchase Medicare supplemental insurance at the rate of one month's coverage for eight hours of the employee's unused sick leave per person.
- (5)
  - (a) The continuing medical and life insurance benefits purchased by an employee under Subsection (4):
    - (i) may not be suspended or deferred for future use; and
    - (ii) continues in effect until exhausted.
  - (b) An employer participating in the Program I benefits under this section may not provide medical or life insurance benefits to a person who is:
    - (i) reemployed after retirement; and
    - (ii) receiving benefits under this section.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-508 Unused Sick Leave Retirement Program II -- Creation -- Remuneration upon eligibility for allowance -- Medical expense account after retirement.**

- (1)
  - (a) There is created the "Unused Sick Leave Retirement Program II."
  - (b) An agency shall offer the Unused Sick Leave Retirement Option Program II to an employee who is eligible to receive a retirement allowance in accordance with Title 49, Utah State Retirement and Insurance Benefit Act.
  - (c) An employee who is participating in the Unused Sick Leave Retirement Program I under Section 63A-17-507 may make a one-time and irrevocable election to transfer all unused sick leave hours which shall include all converted sick leave hours under Section 63A-17-506 for use under the Unused Sick Leave Retirement Program II under this section.
- (2)
  - (a) The Unused Sick Leave Retirement Program II provides that upon becoming eligible to receive a retirement allowance an employee employed by the state between January 1, 2006, and January 3, 2014, shall receive remuneration for the employee's unused accumulated sick leave and converted sick leave accrued between January 1, 2006, and January 3, 2014, in accordance with this section as follows:
    - (i) subject to federal requirements and limitations, a contribution at the employee's rate of pay at the time of retirement for 25% of the employee's unused accumulated sick leave and converted sick leave shall be transferred directly to the employee's defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the Utah State Retirement Board; and
    - (ii) participation in a benefit plan that provides for reimbursement for medical expenses using money deposited at the employee's rate of pay at the time of retirement from remaining unused accumulated sick leave and converted sick leave balances.
  - (b) If the amount calculated under Subsection (2)(a)(i) exceeds the federal contribution limitations, the amount representing the excess shall be deposited under Subsection (2)(a)(ii).
  - (c) An employee's rate of pay at the time of retirement for purposes of Subsection (2)(a)(ii) may not be less than the average rate of pay of state employees who retired in the same retirement system under Title 49, Utah State Retirement and Insurance Benefit Act, during the previous calendar year.
- (3) The Utah State Retirement Office shall develop and maintain a program to provide a benefit plan that provides for reimbursement for medical expenses under Subsection (2)(a)(ii) with money deposited under Subsection (2)(a)(ii).

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-509 Organ donor leave.**

- (1) An employee who serves as a bone marrow donor shall be granted a paid leave of absence of up to seven days that are necessary for the donation and recovery from the donation.
- (2) An employee who serves as a donor of a human organ shall be granted a paid leave of absence of up to 30 days that are necessary for the donation and recovery from the donation.
- (3) In recognition of National Donate Life Month, 2015, created by Proclamation No. 9248, 80 F.R. 18511 (April 1, 2015), the department shall distribute an electronic message to each employee during the month of April publicizing the leave offered under this section.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-510 Annual leave -- Definitions -- Previously accrued hours -- Recognition of liability.**

- (1) As used in this section:

- (a)
  - (i) "Annual leave II" means leave hours an employing agency provides to an employee, beginning on the change date established in Subsection (2), as time off from work for personal use without affecting the employee's pay.
  - (ii) "Annual leave II" does not include:
    - (A) legal holidays under Section 63G-1-301;
    - (B) time off as compensation for actual time worked in excess of an employee's defined work period;
    - (C) sick leave;
    - (D) paid or unpaid administrative leave; or
    - (E) other paid or unpaid leave from work provided by state statute, administrative rule, or by federal law or regulation.
  - (b) "Change date" means the date established by the Division of Finance under Subsection (2) when annual leave II begins for a state agency.
- (2) In accordance with the Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Division of Finance shall establish a date that is no later than January 2, 2016, when a state agency shall offer annual leave II in lieu of annual leave to an employee who is eligible to receive paid leave.
- (3) An employing agency shall allow an employee who has an unused balance of accrued annual leave before the change date, to use the annual leave under the same rules that applied to the leave on the change date.
- (4)
  - (a) At the time of employee accrual of annual leave II, an employing agency shall set aside the cost of each hour of annual leave II for each eligible employee in an amount determined in accordance with rules made by the Division of Finance.
  - (b) The rules made under Subsection (4)(a) shall consider:
    - (i) the employee hourly rate of pay;
    - (ii) applicable employer paid taxes that would be required if the employee was paid for the annual leave II instead of using it for time off;
    - (iii) other applicable employer paid benefits; and
    - (iv) adjustments due to employee hourly rate changes, including the effect on accrued annual leave II balances.
  - (c) The Division of Finance shall provide that the amount of costs set aside under Subsection (4) (a) and deposited into the fund increase by at least the projected increase in annual leave liability for that year, until the year-end trust fund balances are reached as required under Subsection 67-19f-201(3)(b).
- (5) The cost set aside under Subsection (4) shall be deposited by the Division of Finance into the State Employees' Annual Leave Trust Fund created in Section 67-19f-201.
- (6) For annual leave hours accrued before the change date, an employing agency shall continue to comply with the Division of Finance requirements for contributions to the termination pool.
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
  - (a) the division shall make rules for the accrual and use of annual leave II provided under this section; and
  - (b) the Division of Finance shall make rules for the set aside provisions under Subsections (4) and (5).

Renumbered and Amended by Chapter 344, 2021 General Session



**63A-17-511 Parental leave -- Postpartum recovery leave.**

(1) As used in this section:

- (a) "Parental leave" means leave hours a state employer provides to a parental leave eligible employee.
- (b) "Parental leave eligible employee" means an employee who:
  - (i) is in a position that receives retirement benefits under Title 49, Utah State Retirement and Insurance Benefit Act;
  - (ii) accrues paid leave benefits that can be used in the current and future calendar years;
  - (iii) is not reemployed as defined in Section 49-11-1202; and
  - (iv)
    - (A) is a birth parent as defined in Section 78B-6-103;
    - (B) legally adopts a minor child, unless the individual is the spouse of the pre-existing parent;
    - (C) is the intended parent of a child born under a validated gestational agreement in accordance with Title 78B, Chapter 15, Part 8, Gestational Agreement; or
    - (D) is appointed the legal guardian of a minor child or incapacitated adult.
- (c) "Postpartum recovery leave" means leave hours a state employer provides to a postpartum recovery leave eligible employee to recover from childbirth.
- (d) "Retaliatory action" means to do any of the following to an employee:
  - (i) dismiss the employee;
  - (ii) reduce the employee's compensation;
  - (iii) fail to increase the employee's compensation by an amount that the employee is otherwise entitled to or was promised;
  - (iv) fail to promote the employee if the employee would have otherwise been promoted; or
  - (v) threaten to take an action described in Subsections (1)(d)(i) through (iv).
- (e) "Postpartum recovery leave eligible employee" means an employee who:
  - (i) is in a position that receives retirement benefits under Title 49, Utah State Retirement and Insurance Benefit Act;
  - (ii) accrues paid leave benefits that can be used in the current and future calendar years;
  - (iii) is not reemployed as defined in Section 49-11-1202; and
  - (iv) gives birth to a child.
- (f)
  - (i) "State employer" means:
    - (A) a state executive branch agency, including the State Tax Commission, the National Guard, and the Board of Pardons and Parole;
    - (B) the legislative branch of the state; or
    - (C) the judicial branch of the state.
  - (ii) "State employer" does not include:
    - (A) an institute of higher education;
    - (B) the Utah Board of Higher Education;
    - (C) the State Board of Education;
    - (D) an independent entity as defined in Section 63E-1-102;
    - (E) the Attorney General's Office;
    - (F) the State Auditor's Office; or
    - (G) the State Treasurer's Office.
- (g) "Qualified employee" means:
  - (i) a parental leave eligible employee; or
  - (ii) a postpartum leave eligible employee.

(2)

- (a) Except as provided in Subsections (4) and (5), a state employer shall:
    - (i) allow a parental leave eligible employee to use up to three work weeks of paid parental leave for:
      - (A) the birth of the parental leave eligible employee's child;
      - (B) the adoption of a minor child; or
      - (C) the appointment of legal guardianship of a minor child or incapacitated adult; and
    - (ii) allow a postpartum recovery leave eligible employee to use up to three work weeks of paid postpartum recovery leave for recovery from childbirth.
  - (b) A state employer shall allow a qualified employee who is part-time or who works in excess of a 40-hour work week or its equivalent to use the amount of parental leave or postpartum recovery leave available to the qualified employee under this section on a pro rata basis as adopted by rule by the division under Subsection (12).
- (3)
- (a) Parental leave described in Subsection (2)(a)(i):
    - (i) may not be used before the day on which:
      - (A) the parental leave eligible employee's child is born;
      - (B) the parental leave eligible employee adopts a minor child; or
      - (C) the parental leave eligible employee is appointed legal guardian of a minor child or incapacitated adult;
    - (ii) may not be used more than six months after the date described in Subsection (3)(a)(i);
    - (iii) may not be used intermittently, unless:
      - (A) by mutual written agreement between the state employer and the parental leave eligible employee; or
      - (B) a health care provider certifies that intermittent leave is medically necessary due to a serious health condition of the child;
    - (iv) runs concurrently with any leave authorized under the Family and Medical Leave Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and
    - (v) runs consecutively to postpartum recovery leave.
  - (b) The amount of parental leave authorized under Subsection (2)(a)(i) does not increase if a parental leave eligible employee:
    - (i) has more than one child born from the same pregnancy;
    - (ii) adopts more than one minor child; or
    - (iii) is appointed legal guardian of more than one minor child or incapacitated adult.
  - (c) A parental leave eligible employee may not use more than three work weeks of paid parental leave within a single 12-month period, regardless of whether during that 12-month period the parental leave eligible employee:
    - (i) becomes the parent of more than one child;
    - (ii) adopts more than one minor child; or
    - (iii) is appointed legal guardian of more than one minor child or incapacitated adult.
- (4)
- (a) Postpartum recovery leave described in Subsection (2)(a)(ii):
    - (i) shall be used starting on the day on which the postpartum recovery leave eligible employee gives birth, unless a health care provider certifies that an earlier start date is medically necessary;
    - (ii) shall be used in a single continuous period;
    - (iii) runs concurrently with any leave authorized under the Family and Medical Leave Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and
    - (iv) runs consecutively to parental leave.

- (b) The amount of postpartum recovery leave authorized under Subsection (2)(a)(ii) does not increase if a postpartum recovery leave eligible employee has more than one child born from the same pregnancy.
- (5)
  - (a) Except as provided in Subsection (5)(b), a qualified employee shall give the state employer notice at least 30 days before the day on which the qualified employee plans to:
    - (i) begin using parental leave or postpartum recovery leave under this section; and
    - (ii) stop using postpartum recovery leave under this section.
  - (b) If circumstances beyond the qualified employee's control prevent the qualified employee from giving notice in accordance with Subsection (5)(a), the qualified employee shall give each notice described in Subsection (5)(a) as soon as reasonably practicable.
- (6) Except as provided in Subsections (3)(a)(iv) and (4)(a)(iii), a state employer may not charge parental leave or postpartum recovery leave under this section against sick, annual, compensatory, excess, or other leave a qualified employee is entitled to.
- (7) A state employer may not compensate a qualified employee for any unused parental leave or postpartum recovery leave upon termination of employment.
- (8)
  - (a) Following the expiration of a qualified employee's parental leave or postpartum recovery leave under this section, the state employer shall ensure that the qualified employee may return to:
    - (i) the position that the qualified employee held before using parental leave or postpartum recovery leave; or
    - (ii) a position within the state employer that is equivalent in seniority, status, benefits, and pay to the position that the qualified employee held before using parental leave or postpartum recovery leave.
  - (b) If during the time a qualified employee uses parental leave or postpartum recovery leave under this section the state employer experiences a reduction in force and, as part of the reduction in force, the qualified employee would have been separated had the qualified employee not been using the parental leave or postpartum recovery leave, the state employer may separate the qualified employee in accordance with any applicable process or procedure as if the qualified employee were not using the parental leave or postpartum recovery leave.
- (9) During the time a qualified employee uses parental leave or postpartum recovery leave under this section, the qualified employee shall continue to receive all employment related benefits and payments at the same level that the qualified employee received immediately before beginning the parental leave or postpartum leave, provided that the qualified employee pays any required employee contributions.
- (10) A state employer may not:
  - (a) interfere with or otherwise restrain a qualified employee from using parental leave or postpartum recovery leave in accordance with this section; or
  - (b) take retaliatory action against a qualified employee for using parental leave or postpartum recovery leave in accordance with this section.
- (11) A state employer shall provide each employee written information regarding a qualified employee's right to use parental leave or postpartum recovery leave under this section.
- (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall, on or before July 1, 2022, make rules for the use and administration of parental leave and postpartum recovery leave under this section, including a schedule that provides paid parental leave or postpartum recovery leave for a qualified employee who is part-time or who works in excess of a 40-hour work week on a pro rata basis.

Amended by Chapter 425, 2022 General Session

***Superseded 7/1/2023***

**63A-17-512 Leave of absence with pay for employees with a disability who are covered under other civil service systems.**

(1) As used in this section:

- (a) "Eligible officer" means a person who qualifies for a benefit under this section.
- (b)
  - (i) "Law enforcement officer" means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state, and whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes of this state.
  - (ii) "Law enforcement officer" specifically includes the following:
    - (A) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;
    - (B) all persons specified in Sections 23-20-1.5 and 79-4-501;
    - (C) investigators for the Motor Vehicle Enforcement Division;
    - (D) special agents or investigators employed by the attorney general;
    - (E) employees of the Department of Natural Resources designated as peace officers by law;
    - (F) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division; and
    - (G) correctional enforcement, investigative, or adult probation and parole officers employed by the Department of Corrections serving on or before July 1, 1993.
- (c) "State correctional officer" means a correctional officer as defined in Section 53-13-104 who is employed by the Department of Corrections.

(2)

- (a) A law enforcement officer or state correctional officer who is injured in the course of employment shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits during the period the employee has a temporary disability.
- (b) The benefit provided under Subsection (2)(a):
  - (i) shall be offset as provided under Subsection (4); and
  - (ii) may not exceed 100% of the officer's regular monthly salary and benefits, including all offsets required under Subsection (4).

(3)

- (a) A law enforcement officer or state correctional officer who has a total disability as defined in Section 49-21-102, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits until the officer is eligible for an unreduced retirement under Title 49, Utah State Retirement and Insurance Benefit Act, or reaches the retirement age of 62 years, whichever occurs first, if:
  - (i) the disability is a result of an injury sustained while in the lawful discharge of the officer's duties; and
  - (ii) the injury is the result of:
    - (A) a criminal act upon the officer; or
    - (B) an aircraft, vehicle, or vessel accident and the officer was not negligent in causing the accident.
- (b) The benefit provided under Subsection (3)(a):
  - (i) shall be offset as provided under Subsection (4); and

- (ii) may not exceed 100% of the officer's regular monthly salary and benefits, including all offsets required under Subsection (4).
- (4)
  - (a) The agency shall reduce or require the reimbursement of the monthly benefit provided under this section by any amount received by, or payable to, the eligible officer for the same period of time during which the eligible officer is entitled to receive a monthly disability benefit under this section.
  - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing policies and procedures for the reductions required under Subsection (4)(a).

Renumbered and Amended by Chapter 344, 2021 General Session

**Effective 7/1/2023**

**63A-17-512 Leave of absence with pay for employees with a disability who are covered under other civil service systems.**

- (1) As used in this section:
  - (a) "Eligible officer" means a person who qualifies for a benefit under this section.
  - (b)
    - (i) "Law enforcement officer" means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state, and whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes of this state.
    - (ii) "Law enforcement officer" specifically includes the following:
      - (A) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;
      - (B) all persons specified in Sections 23A-5-202 and 79-4-501;
      - (C) investigators for the Motor Vehicle Enforcement Division;
      - (D) special agents or investigators employed by the attorney general;
      - (E) employees of the Department of Natural Resources designated as peace officers by law;
      - (F) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division; and
      - (G) correctional enforcement, investigative, or adult probation and parole officers employed by the Department of Corrections serving on or before July 1, 1993.
  - (c) "State correctional officer" means a correctional officer as defined in Section 53-13-104 who is employed by the Department of Corrections.
- (2)
  - (a) A law enforcement officer or state correctional officer who is injured in the course of employment shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits during the period the employee has a temporary disability.
  - (b) The benefit provided under Subsection (2)(a):
    - (i) shall be offset as provided under Subsection (4); and
    - (ii) may not exceed 100% of the officer's regular monthly salary and benefits, including all offsets required under Subsection (4).
- (3)
  - (a) A law enforcement officer or state correctional officer who has a total disability as defined in Section 49-21-102, shall be given a leave of absence with 100% of the officer's regular

monthly salary and benefits until the officer is eligible for an unreduced retirement under Title 49, Utah State Retirement and Insurance Benefit Act, or reaches the retirement age of 62 years, whichever occurs first, if:

- (i) the disability is a result of an injury sustained while in the lawful discharge of the officer's duties; and
- (ii) the injury is the result of:
  - (A) a criminal act upon the officer; or
  - (B) an aircraft, vehicle, or vessel accident and the officer was not negligent in causing the accident.
- (b) The benefit provided under Subsection (3)(a):
  - (i) shall be offset as provided under Subsection (4); and
  - (ii) may not exceed 100% of the officer's regular monthly salary and benefits, including all offsets required under Subsection (4).
- (4)
  - (a) The agency shall reduce or require the reimbursement of the monthly benefit provided under this section by any amount received by, or payable to, the eligible officer for the same period of time during which the eligible officer is entitled to receive a monthly disability benefit under this section.
  - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing policies and procedures for the reductions required under Subsection (4)(a).

## **Part 6 Grievance Provisions**

### **63A-17-601 Grievance resolution -- Jurisdiction.**

- (1) Employees shall comply with the procedural and jurisdictional requirements of this section, Title 63G, Chapter 4, Administrative Procedures Act, and Chapter 19a, Grievance Procedures, in seeking resolution of grievances.
- (2) All grievances based upon a claim or charge of injustice or oppression, including dismissal from employment, resulting from an act, occurrence, commission, or condition shall be governed by Title 67, Chapter 19a, Grievance Procedures, and Title 63G, Chapter 4, Administrative Procedures Act.
- (3) All grievances involving classification shall be governed by Section 63A-17-602 and are designated as informal adjudicative proceedings as defined by Title 63G, Chapter 4, Administrative Procedures Act.
- (4) All grievances by applicants for positions in state government involving an alleged discriminatory or prohibited employment practice shall be governed by Section 63A-17-603 and Title 63G, Chapter 4, Administrative Procedures Act.
- (5) A "grievance" under this chapter is a request for agency action for purposes of Title 63G, Chapter 4, Administrative Procedures Act.

Renumbered and Amended by Chapter 344, 2021 General Session

### **63A-17-602 Position classification grievances -- Scope -- Procedure.**

- (1)
  - (a) For the purpose of position classification grievances, the process that culminates in assigning a career service position to an appropriate class specification is a matter of position classification and may be grieved.
  - (b) The process that culminates in assigning a salary range to the class specification is not a position classification and may not be grieved as a classification grievance.
- (2)
  - (a) Upon receipt of a position classification grievance, the director shall refer the grievance to a classification panel of three or more impartial persons trained in state classification procedures.
  - (b) The classification panel shall determine whether or not the classification assignment for career service positions was appropriate by applying the statutes, rules, and procedures adopted by the division that were in effect at the time of the classification change.
  - (c) The classification panel may:
    - (i) obtain access to previous audits, classification decisions, and reports;
    - (ii) request new or additional audits by human resource analysts; and
    - (iii) consider new or additional information.
  - (d) The classification panel may sustain or modify the original decision and, if applicable, recommend a new classification.
  - (e) The classification panel shall report the classification panel's recommendation to the director, who shall make the classification decision and notify the grievant.
- (3)
  - (a) Either party may appeal the director's decision to an impartial hearing officer trained in state classification procedures selected through a public bid process by a panel consisting of the following members:
    - (i) a current or former government employee with experience in human resource management;
    - (ii) two department executive directors;
    - (iii) a private sector human resources executive appointed by the governor; and
    - (iv) a representative of the Utah Public Employees Association.
  - (b) The successful bid shall serve under contract for no more than three years. At the end of that time, the division shall reissue the bid.
  - (c) The hearing officer shall review the classification and make the final decision. The final decision is subject to judicial review pursuant to the provisions of Section 63G-4-402.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-603 Discriminatory/prohibited employment practices grievances -- Procedures.**

- (1) An applicant for a position in state government, a probationary employee, career service employee, or an exempt employee who alleges a discriminatory or prohibited employment practice as defined in Section 34A-5-106 may submit a written grievance to the department head where the alleged unlawful act occurred.
- (2) Within 10 working days after a written grievance is submitted under Subsection (1), the department head shall issue a written response to the grievance stating his decision and the reasons for the decision.
- (3) If the department head does not issue a decision within 10 days, or if the grievant is dissatisfied with the decision, the grievant may submit a complaint to the Division of Antidiscrimination and Labor, pursuant to Section 34A-5-107.

Renumbered and Amended by Chapter 344, 2021 General Session

## **Part 7 Administrative Law Judges**

### **63A-17-701 Definitions.**

In addition to the definitions found in Section 63A-17-102, as used in this part:

- (1)
  - (a) "Administrative law judge" means an individual who is employed or contracted by a state agency who:
    - (i) presides over or conducts formal administrative hearings on behalf of an agency;
    - (ii) has the power to administer oaths, rule on the admissibility of evidence, take testimony, evaluate evidence, and make determinations of fact; and
    - (iii) issues written orders, rulings, or final decisions on behalf of an agency.
  - (b) "Administrative law judge" does not mean:
    - (i) an individual who reviews an order or ruling of an administrative law judge; or
    - (ii) the executive director of a state agency.
- (2) "Committee" means the Administrative Law Judge Conduct Committee created in Section 63A-17-708.

Renumbered and Amended by Chapter 344, 2021 General Session

### **63A-17-702 Administrative law judges -- Applicability -- Destruction of evidence.**

- (1)
  - (a) Except as provided in Subsections (1)(b) and (2), the provisions of this part apply to an administrative law judge who conducts formal adjudicative proceedings.
  - (b) Except as provided in Subsection (2), the provisions of this part do not apply to an administrative law judge who is employed by or contracts with:
    - (i) the Board of Pardons and Parole;
    - (ii) the Department of Corrections; or
    - (iii) the State Tax Commission.
- (2) The code of conduct established by the division under Subsection 63A-17-703(4) applies to all administrative law judges.
- (3) An administrative law judge who tampers with or destroys evidence submitted to the administrative law judge is subject to the provisions of Section 76-8-510.5. This section does not apply to documents destroyed in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 344, 2021 General Session

### **63A-17-703 Rulemaking authority.**

The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (1) establishing minimum performance standards for all administrative law judges;
- (2) providing procedures for filing, addressing, and reviewing complaints against administrative law judges;



- (3) providing standards for complaints against administrative law judges;
- (4) promulgating a code of conduct for all administrative law judges in all state agencies; and
- (5) establishing a procedural fairness training program as described in Section 63A-17-709.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-704 Hiring of administrative law judges.**

- (1) Except as provided in Subsection (6), each administrative law judge hired on or after May 10, 2016, shall be hired in accordance with this section.
- (2) If an applicant for an administrative law judge position is selected for an interview in accordance with applicable law and division rule, the agency shall interview the applicant by means of a hiring panel.
- (3) The hiring panel described in Subsection (2) shall consist of:
  - (a) the head of the hiring agency;
  - (b) the head of another agency, appointed by the director; and
  - (c) the director.
- (4) Each individual described in Subsection (3) may designate another individual to serve on the hiring panel on the individual's behalf.
- (5) After the hiring panel completes the interviews for an administrative law judge position:
  - (a) the hiring panel shall select the top three applicants for the administrative law judge position; and
  - (b) the head of the hiring agency shall:
    - (i) consider any opinions or feedback from the other members of the hiring panel with respect to the top three applicants; and
    - (ii)
      - (A) hire an applicant from the top three applicants to fill the administrative law judge position; or
      - (B) decide not to hire any of the top three applicants and restart the hiring process to fill the administrative law judge position.
- (6) This section does not apply to an administrative law judge who is appointed by the governor.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-705 Performance evaluation of administrative law judges.**

- (1) The division shall prepare a performance evaluation for each administrative law judge contracted or employed by a state agency.
- (2) The performance evaluation for an administrative law judge shall include:
  - (a) the results of the administrative law judge's performance evaluations conducted by the employing agency since the administrative law judge's last performance evaluation conducted by the division in accordance with the performance evaluation procedure for the agency;
  - (b) information from the employing agency concerning the administrative law judge's compliance with minimum performance standards;
  - (c) the administrative law judge's disciplinary record, if any;
  - (d) the results of any performance surveys conducted since the administrative law judge's last performance review conducted by the division; and
  - (e) any other factor that the division considers relevant to evaluating the administrative law judge's performance.

- (3) If an administrative law judge fails to meet the minimum performance standards the division shall provide a copy of the performance evaluation and survey to the employing agency.
- (4) The division shall conduct performance reviews every four years for administrative law judges contracted or employed by an agency.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-706 Performance surveys.**

- (1) All administrative law judges shall be on a four-year staggered cycle for performance evaluations.
- (2) The performance survey shall include as respondents a sample of each of the following groups as applicable:
  - (a) attorneys who have appeared before the administrative law judge as counsel; and
  - (b) staff who have worked with the administrative law judge.
- (3) The division may include an additional classification of respondents if the division:
  - (a) considers a survey of that classification of respondents helpful to the division; and
  - (b) establishes the additional classification of respondents by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) A survey response is anonymous, including any comment included with a survey response.
- (5) If the division provides any information to an administrative law judge or the committee, the information shall be provided in a manner to protect the confidentiality of a survey respondent.
- (6) If the division establishes an additional classification, in accordance with Subsection (3), a survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appeared before the administrative law judge is closed, exclusive of any appeal. Staff and attorneys may be surveyed at any time during the survey period.
- (7) The performance survey shall include questions relating to whether the administrative law judge's behavior furthers the following elements of procedural fairness:
  - (a) neutrality, including:
    - (i) consistent and equal treatment of the individuals who appear before the administrative law judge;
    - (ii) concern for the individual needs of the individuals who appear before the administrative law judge; and
    - (iii) careful deliberation;
  - (b) respectful treatment of others; and
  - (c) providing individuals a voice and opportunity to be heard.
- (8) The performance survey may include questions concerning an administrative law judge's:
  - (a) legal ability, including the following:
    - (i) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;
    - (ii) attentiveness to factual and legal issues before the administrative law judge;
    - (iii) adherence to precedent and ability to clearly explain departures from precedent;
    - (iv) grasp of the practical impact on the parties of the administrative law judge's rulings, including the effect of delay and increased litigation expense;
    - (v) ability to write clear opinions and decisions; and
    - (vi) ability to clearly explain the legal basis for opinions;
  - (b) temperament and integrity, including the following:
    - (i) demonstration of courtesy toward attorneys, staff, and others in the administrative law judge's department;

- (ii) maintenance of decorum in the courtroom;
  - (iii) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the administrative law judge system;
  - (iv) preparedness for oral argument;
  - (v) avoidance of impropriety or the appearance of impropriety;
  - (vi) display of fairness and impartiality toward all parties; and
  - (vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions; and
- (c) administrative performance, including the following:
- (i) management of workload;
  - (ii) sharing proportionally the workload within the division; and
  - (iii) issuance of opinions and orders without unnecessary delay.
- (9) If the division determines that a certain survey question or category of questions is not appropriate for a respondent group, the division may omit that question or category of questions from the survey provided to that respondent group.
- (10)
- (a) The survey shall allow respondents to indicate responses in a manner determined by the division, which shall be:
    - (i) on a numerical scale from one to five; or
    - (ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.
  - (b) To supplement the responses to questions on either a numerical scale or in the affirmative or negative, the division may allow respondents to provide written comments.
- (11) The division shall compile and make available to each administrative law judge that administrative law judge's survey results with each of the administrative law judge's performance evaluations.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-707 Complaints.**

- (1) A complaint against an administrative law judge shall be filed with the division.
- (2) Upon receipt of a complaint, the division shall conduct an investigation.
- (3) If the division's investigation determines that the complaint is frivolous or without merit, it may dismiss it without further action. A complaint that merely indicates disagreement, without further misconduct, with the administrative law judge's decision shall be treated as without merit.
- (4) The contents of all complaints and subsequent investigations are classified as protected under Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-708 Administrative Law Judge Conduct Committee.**

- (1) There is created the Administrative Law Judge Conduct Committee to investigate, review, and hear complaints filed against administrative law judges.
- (2) The committee shall be composed of:
  - (a) the director, or the director's designee, as chair; and
  - (b) four executive directors, or their designees, of agencies that employ or contract with administrative law judges, to be selected by the director as needed.

(3) The division shall provide staff for the committee as needed.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-709 Procedure for review of complaint by conduct committee.**

- (1) Upon a determination that a complaint requires further action, the director shall select four executive directors or their designees and convene the committee. The executive director of the agency that employs or contracts with the administrative law judge who is the subject of the complaint may not be a member of the committee.
- (2) The division shall provide a copy of the complaint, along with the results of the division's investigation, to the committee and the administrative law judge who is the subject of the complaint. If the committee directs, a copy of the complaint and investigation may also be provided to the attorney general.
- (3) The committee shall allow an administrative law judge who is the subject of a complaint to appear and speak at any committee meeting, except a closed meeting, during which the committee is deliberating the complaint.
- (4) The committee may meet in a closed meeting to discuss a complaint against an administrative law judge by complying with Title 52, Chapter 4, Open and Public Meetings Act.
- (5) After deliberation and discussion of the complaint and all information provided, the committee shall provide a report, with a recommendation, to the agency. The recommendation shall include:
  - (a) a brief description of the complaint and results of the division's investigation;
  - (b) the committee's findings; and
  - (c) a recommendation from the committee whether action should be taken against the administrative law judge.
- (6) Actions recommended by the committee may include no action, disciplinary action, termination, or any other action an employer may take against an employee.
- (7) The record of an individual committee member's vote on recommended actions against an administrative law judge is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-710 Required training.**

- (1) Each year that an administrative law judge receives a performance evaluation conducted by the division under this chapter, the administrative law judge shall complete the procedural fairness training program described in this section.
- (2) The division shall establish a procedural fairness training program that includes training on how an administrative law judge's actions and behavior influence others' perceptions of the fairness of the adjudicative process.
- (3) The procedural fairness training program shall include discussion of the following elements of procedural fairness:
  - (a) neutrality, including:
    - (i) consistent and equal treatment of the individuals who appear before the administrative law judge;
    - (ii) concern for the individual needs of the individuals who appear before the administrative law judge; and
    - (iii) unhurried and careful deliberation;

- (b) respectful treatment of others; and
- (c) providing individuals a voice and opportunity to be heard.
- (4) The division may contract with a public or private person to develop or provide the procedural fairness training program.
- (5) The division shall ensure that the procedural fairness training program complies with Title 63G, Chapter 22, State Training and Certification Requirements.

Renumbered and Amended by Chapter 344, 2021 General Session

## **Part 8 Plans and Programs**

### **63A-17-801 Equal employment opportunity plan.**

- (1) In conjunction with the director's duties under Section 63A-17-106, and notwithstanding the general prohibition in Subsection 34A-5-106(3)(c), the director shall prepare an equal employment opportunity plan for state employment consistent with the guidelines provided in federal equal employment opportunity laws and in related federal regulations.
- (2) The equal employment opportunity plan required by this section applies only to state career service employees described in Section 63A-17-301.
- (3) The Legislature shall review the equal employment opportunity plan required by this section before it may be implemented.
- (4) Nothing in this section requires the establishment of hiring quotas or preferential treatment of any identifiable group.

Renumbered and Amended by Chapter 344, 2021 General Session

### **63A-17-802 Education benefit plan for law enforcement and correctional officers.**

- (1) As used in this section:
  - (a) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.
  - (b) "Correctional officer" means the same as that term is defined in Section 53-13-104.
- (2) The director shall establish a plan authorizing any agency to implement an educational compensation program for law enforcement officers and correctional officers employed by that agency.
- (3) The program shall provide that in order for a law enforcement officer or correctional officer to qualify for education benefits for college or university education, the law enforcement officer or correctional officer shall:
  - (a) provide a certified transcript of grades, demonstrating a grade point average of 3.0 or greater, from an accredited college or university; and
  - (b) have successfully completed the probationary employment period with the employing agency.
- (4) The program shall also provide that the agency may consider a law enforcement officer or correctional officer to receive additional compensation as follows for higher education degrees earned on or after April 30, 2001, in a subject area directly related to the law enforcement officer's or correctional officer's employment with the agency:
  - (a) 5.5% for an associate's degree;
  - (b) 5.5% for a bachelor's degree; and
  - (c) 5.5% for a master's degree.

- (5) Expenses incurred by an agency to provide additional compensation under this section may be only from the agency's existing budget.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-803 Creation of Flexible Benefit Program -- Rulemaking power granted to establish program.**

- (1) The division shall establish for calendar year 1990 and thereafter a Flexible Benefit Program under Section 125 of the Internal Revenue Code of 1986.
- (2) The division shall establish accounts for all employees eligible for benefits which meet the nondiscrimination requirements of the Internal Revenue Code of 1986.
- (3)
  - (a) Each account established under this section shall include employee paid premiums for health and dental services.
  - (b) The account may also include, at the option of the employee, out-of-pocket employee medical and dependent care expenses.
  - (c) Accounts may also include other expenses allowed under the Internal Revenue Code of 1986.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to implement the program established under this section.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-804 Continuation of Insurance Benefits Program -- Creation -- Coverage following death in the line of duty.**

- (1) There is created the "Continuation of Insurance Benefits Program" to provide a continuation of insurance to the surviving spouse and family of any state employee whose death occurs in the line of duty.
- (2) The insurance coverage shall be the same coverage as provided under Section 49-20-406.
- (3) The program provides that unused accumulated sick leave of a deceased employee may be used for additional medical coverage in the same manner as provided under Section 63A-17-507 or 63A-17-508 as applicable.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-805 State employee matching supplemental defined contribution benefit.**

- (1) As used in this section:
  - (a) "Qualifying account" means:
    - (i) a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code, which is sponsored by the Utah State Retirement Board;
    - (ii) a deemed Individual Retirement Account authorized under the Internal Revenue Code, which is sponsored by the Utah State Retirement Board; or
    - (iii) a similar savings plan or account authorized under the Internal Revenue Code, which is sponsored by the Utah State Retirement Board.
  - (b) "Qualifying employee" means an employee who is:
    - (i) in a position that is:
      - (A) receiving retirement benefits under Title 49, Utah State Retirement and Insurance Benefit Act; and

- (B) accruing paid leave benefits that can be used in the current and future calendar years;  
and
- (ii) not an employee who is reemployed as that term is:
  - (A) defined in Section 49-11-1202; or
  - (B) used in Section 49-11-504.
- (2) Subject to the requirements of Subsection (3), an employer shall make a biweekly matching contribution to every qualifying employee's defined contribution plan qualified under Section 401(k) of the Internal Revenue Code, subject to federal requirements and limitations, which is sponsored by the Utah State Retirement Board.
- (3)
  - (a) In accordance with the requirements of this Subsection (3), each qualifying employee shall be eligible to receive the same dollar amount for the contribution under Subsection (2).
  - (b) A qualifying employee who is hired before July 1, 2023:
    - (i) shall receive the contribution amount determined under Subsection (3)(f) if the qualifying employee makes a voluntary personal contribution to one or more qualifying accounts in an amount equal to or greater than the employer's contribution amount determined under Subsection (3)(f);
    - (ii) shall receive a partial contribution amount that is equal to the qualifying employee's personal contribution amount if the employee makes a voluntary personal contribution to one or more qualifying accounts in an amount less than the employer's contribution amount determined under Subsection (3)(f); or
    - (iii) may not receive a contribution under Subsection (2) if the qualifying employee does not make a voluntary personal contribution to a qualifying account.
  - (c)
    - (i) An employer shall automatically enroll a qualifying employee who is hired on or after July 1, 2023, to make a personal contribution to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code, which is sponsored by the Utah State Retirement Board, in an amount equal to the employer's contribution amount determined under Subsection (3)(f).
    - (ii) A qualifying employee who makes a personal contribution in accordance with Subsection (3)(c)(i) shall receive the contribution amount determined under Subsection (3)(f).
  - (d)
    - (i) A qualifying employee who is hired on or after July 1, 2023, may opt out of the automatic enrollment by choosing not to make any future personal contributions.
    - (ii) A qualifying employee who opts out of automatic enrollment in accordance with this Subsection (3)(d) may not receive a contribution under Subsection (2).
  - (e)
    - (i) A qualifying employee who is hired on or after July 1, 2023, may modify the automatic enrollment by opting to make future personal contributions:
      - (A) in an amount other than the amount determined under Subsection (3)(f); or
      - (B) to a qualifying account other than the defined contribution plan qualified under Section 401(k) of the Internal Revenue Code, which is sponsored by the Utah State Retirement Board.
    - (ii) A qualifying employee who opts to make a personal contribution for less than the amount determined under Subsection (3)(f) shall receive a partial contribution that is equal to the qualifying employee's personal contribution amount.
  - (f)

- (i) Subject to the maximum limit under Subsection (3)(f)(iii), the Legislature shall annually determine the contribution amount that an employer shall provide to each qualifying employee under Subsection (2).
  - (ii) The division shall make recommendations annually to the Legislature on the contribution amount required under Subsection (2), in consultation with the Governor's Office of Planning and Budget and the Division of Finance.
  - (iii) The biweekly matching contribution amount required under Subsection (2) may not exceed \$26 for each qualifying employee.
- (4) A qualifying employee is eligible to receive the biweekly contribution under this section for any pay period in which the employee is in a paid status or other status protected by federal or state law.
- (5) The employer and employee contributions made and related earnings under this section vest immediately upon deposit and can be withdrawn by the employee at any time, subject to Internal Revenue Code regulations on the withdrawals.
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall make rules establishing procedures to implement the provisions of this section.

**63A-17-806 Definitions -- Infant at Work Pilot Program -- Administration -- Report.**

- (1) As used in this section:
- (a) "Eligible employee" means an employee who has been employed by the Department of Health and Human Services for a minimum of:
    - (i) 12 consecutive months; and
    - (ii) 1,250 hours, excluding paid time off during the 12-month period immediately preceding the day on which the employee applies for participation in the program.
  - (b) "Infant" means a baby that is at least six weeks of age and no more than six months of age.
  - (c) "Parent" means:
    - (i) a biological or adoptive parent of an infant; or
    - (ii) an individual who has an infant placed in the individual's foster care by the Division of Child and Family Services.
  - (d) "Program" means the Infant at Work Pilot Program established in this section.
- (2) There is created the Infant at Work Pilot Program for eligible employees.
- (3) The program shall:
- (a) allow an eligible employee to bring the eligible employee's infant to work subject to the provisions of this section;
  - (b) be administered by the division; and
  - (c) be implemented for a minimum of one year.
- (4) The division shall establish an application process for eligible employees of the Department of Health and Human Services to apply to the program that includes:
- (a) a process for evaluating whether an eligible employee's work environment is appropriate for an infant;
  - (b) guidelines for infant health and safety; and
  - (c) guidelines regarding an eligible employee's initial and ongoing participation in the program.
- (5) If the division approves the eligible employee for participation in the program, the eligible employee shall have the sole responsibility for the care and safety of the infant at the workplace.



- (6) The division may not require the Department of Health and Human Services to designate or set aside space for an eligible employee's infant other than the eligible employee's existing work space.
- (7) The division, in consultation with the Department of Health and Human Services, shall make rules that the department determines necessary to establish the program in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (8) On or before June 30, 2025, the division, in consultation with the Department of Health and Human Services, shall submit a written report to the Business and Labor Interim Committee that describes the efficacy of the program, including any recommendations for additional legislative action.

**63A-17-807 Department award program.**

- (1) As used in this section:
  - (a) "Department" means the Department of Government Operations, the Department of Agriculture and Food, the Department of Alcoholic Beverage Services, the Department of Commerce, the Department of Cultural and Community Engagement, the Department of Corrections, the Department of Workforce Services, the Department of Environmental Quality, the Department of Financial Institutions, the Department of Health, the Department of Human Services, the Insurance Department, the National Guard, the Department of Natural Resources, the Department of Public Safety, the Public Service Commission, the Labor Commission, the State Board of Education, the Utah Board of Higher Education, the State Tax Commission, and the Department of Transportation.
  - (b) "Department head" means the individual or body of individuals in whom the ultimate legal authority of the department is vested by law.
- (2) There is created a department awards program to award an outstanding employee in each department of state government.
- (3)
  - (a) On or before April 1 of each year, each department head shall solicit nominations for outstanding employee of the year for that department from the employees in that department.
  - (b) On or before July 1 of each year, the department head shall:
    - (i) select a person from the department to receive the outstanding employee of the year award using the criteria established in Subsection (3)(c); and
    - (ii) announce the recipient of the award to the employees of the department.
  - (c) Department heads shall make the award to an employee who demonstrates:
    - (i) extraordinary competence in performing the employee's function;
    - (ii) creativity in identifying problems and devising workable, cost-effective solutions;
    - (iii) excellent relationships with the public and other employees;
    - (iv) a commitment to serving the public as the client; and
    - (v) a commitment to economy and efficiency in government.
- (4)
  - (a) The division shall divide any appropriation for outstanding department employee awards that the division receives from the Legislature equally among the departments.
  - (b) If a department receives money from the division or if a department budget allows, that department head shall provide the employee with a bonus, a plaque, or some other suitable acknowledgement of the award.
- (5)

- (a) A department head may name the award after an exemplary present or former employee of the department.
- (b) A department head may not name the award for oneself or for any relative as defined in Section 52-3-1.

Amended by Chapter 447, 2022 General Session

**63A-17-808 On-site child care for state employees.**

- (1) As used in this section:
  - (a) "Child care" means the same as that term is defined in Section 35A-3-201.
  - (b) "Licensed child care provider" means a person who holds a license from the Department of Health and Human Services to provide center based child care in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.
  - (c) "On-site child care center" means a child care center established in a facility that is owned or operated by an agency.
- (2) An agency may enter into a contract with a licensed child care provider to operate an on-site child care center for the benefit of the agency's employees.
- (3) A licensed child care provider that operates an on-site child care center for an agency shall maintain professional liability insurance.
- (4)
  - (a) An agency may charge a licensed child care provider a reasonable fee for operating an on-site child care center so that the agency incurs no expense.
  - (b) The fee in Subsection (4)(a) shall include costs for utility, building maintenance, and administrative services supplied by the agency that are related to the operation of the on-site child care center.
- (5) An agency may consult with the Office of Child Care within the Department of Workforce Services, the Department of Health and Human Services, and the Division of Facilities Construction and Management for assistance in establishing an on-site child care center.
- (6) The state is not liable for any civil damages for acts or omissions resulting from the operation of an on-site child care center.

**63A-17-809 Guidance and data collection regarding employment of individuals with criminal histories.**

- (1) The division shall:
  - (a) provide information and guidance to agencies encouraging the hiring of individuals with criminal histories, including:
    - (i) skills developed during incarceration through the Division of Correctional Industries and any other relevant program; and
    - (ii) guidelines to determine whether an applicant's conviction, disclosed in accordance with Section 34-52-201, is a job-related conviction; and
  - (b) ensure that agency job opportunities available to individuals with criminal histories are included in the web portal.
- (2) On or before October 1, 2024, the division shall provide a written report to the Law Enforcement and Criminal Justice Interim Committee describing the efforts described in Subsection (1).

## **Part 9**

### **General Requirements for State Officers and Employees**

#### **63A-17-904 Political activity of employees -- Rules and regulations -- Highway patrol -- Hatch Act.**

- (1) Except as otherwise provided by law or by rules made under this section for federally aided programs, the provisions of this section apply with regard to political activity of career service employees in all grades and positions.
- (2) Career service employees may voluntarily participate in political activity subject to the following provisions:
  - (a) if any career service employee is elected to any partisan or full-time nonpartisan political office, that employee shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office;
  - (b) no officer or employee in career service may engage in any political activity during the hours of employment, nor may any person solicit political contributions from employees of the executive branch during hours of employment for political purposes; and
  - (c) partisan political activity may not be a basis for employment, promotion, demotion, or dismissal, except that the director shall adopt rules providing for the discipline or punishment of a state officer or employee who violates any provision of this section.
- (3)
  - (a) Notwithstanding any other provision of this section, no member of the Utah Highway Patrol may use the member's official authority or influence for the purpose of interfering with an election or affecting the results of an election.
  - (b) No person may induce or attempt to induce any member of the Utah Highway Patrol to participate in any activity prohibited by this Subsection (3).
- (4) Nothing contained in this section may be construed to:
  - (a) preclude voluntary contributions by an employee to the party or candidate of the officer's or employee's choice; or
  - (b) permit partisan political activity by any employee who is prevented or restricted from engaging in the political activity by the provisions of the federal Hatch Act.

Renumbered and Amended by Chapter 344, 2021 General Session

## **Part 10**

### **Controlled Substances and Alcohol Use**

#### **63A-17-1001 Controlled substances and alcohol use prohibited.**

Except as provided in Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, an employee may not:

- (1) manufacture, dispense, possess, use, distribute, or be under the influence of a controlled substance or alcohol during work hours or on state property except where legally permissible;
- (2) manufacture, dispense, possess, use, or distribute a controlled substance or alcohol if the activity prevents:
  - (a) state agencies from receiving federal grants or performing under federal contracts of \$25,000 or more; or

- (b) the employee to perform his services or work for state government effectively as regulated by the rules of the executive director in accordance with Section 63A-17-1002; or
- (3) refuse to submit to a drug or alcohol test under Section 63A-17-1004.

**63A-17-1002 Rulemaking power to director.**

In accordance with this part and Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall make rules regulating:

- (1) disciplinary actions for employees subject to discipline under Section 63A-17-1005;
- (2) the testing of employees for the use of controlled substances or alcohol as provided in Section 63A-17-1004;
- (3) the confidentiality of drug testing and test results performed under Section 63A-17-1004 in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and
- (4) minimum blood levels of alcohol or drug content for work effectiveness of an employee.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-1003 Reporting of convictions under federal and state drug laws.**

- (1) An employee who is convicted under a federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance shall report the conviction to the director of the employee's agency within five calendar days after the date of conviction.
- (2) Upon notification either under Subsection (1) or otherwise, the director of the agency shall notify the federal agency for which a contract is being performed within 10 days after receiving notice.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-1004 Drug testing of state employees.**

- (1) Except as provided in Subsection (2), when there is reasonable suspicion that an employee is using a controlled substance or alcohol unlawfully during work hours, an employee may be required to submit to medically accepted testing procedures for a determination of whether the employee is using a controlled substance or alcohol in violation of this part.
- (2) In highly sensitive positions, as identified in department class specifications, random drug testing of employees may be conducted by an agency in accordance with the rules of the director.
- (3) All drug or alcohol testing shall be:
  - (a) conducted by a federally certified and licensed physician, a federally certified and licensed medical clinic, or testing facility federally certified and licensed to conduct medically accepted drug testing; and
  - (b) conducted in accordance with the rules of the director made under Section 63A-17-1002.
- (4) A record relating to drug or alcohol testing of a state employee is classified as a private record under Section 63G-2-302.
- (5) A physician, medical clinic, or testing facility may not be held liable in any civil action brought by a party for:
  - (a) performing or failing to perform a test under this section;
  - (b) issuing or failing to issue a test result under this section; or
  - (c) acting or omitting to act in any other way in good faith under this section.

Amended by Chapter 169, 2022 General Session

**63A-17-1005 Discipline of employees.**

An employee shall be subject to the rules of discipline of the director made in accordance with Section 63A-17-1002, if the employee:

- (1) refuses to submit to testing procedures provided in Section 63A-17-1004;
- (2) refuses to complete a drug rehabilitation program in accordance with Subsection 63A-17-1006(3);
- (3) is convicted under a federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance; or
- (4) manufactures, dispenses, possesses, uses, or distributes a controlled substance in violation of state or federal law during work hours or on state property.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-1006 Violations and penalties.**

In addition to other criminal penalties provided by law, an employee who:

- (1) fails to notify the employee's director under Section 63A-17-1003 is subject to disciplinary proceedings as established by the director by rule in accordance with Section 63A-17-1002;
- (2) refuses to submit to testing procedures provided for in Section 63A-17-1004, may be suspended immediately without pay pending further disciplinary action as provided by rule, made by the director in accordance with Section 63A-17-1002; or
- (3) tests positive for the presence of unlawfully used controlled substances or alcohol may be required, as part of the employee's disciplinary treatment, to complete a drug rehabilitation program at the employee's expense within 60 days after receiving the positive test results or be subject to further disciplinary procedures established by rule made by the director in accordance with Section 63A-17-1002.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-1007 Exemptions.**

Peace officers, as defined under Title 53, Chapter 13, Peace Officer Classifications, acting in their official capacity as peace officers in undercover roles and assignments, are exempt from the provisions of this act.

Renumbered and Amended by Chapter 344, 2021 General Session