

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1724

By: Paulk

COMMITTEE SUBSTITUTE

An Act relating to state personnel administration; amending 74 O.S. 1991, Sections 841.7, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 4, Chapter 310, O.S.L. 1995, Section 1, Chapter, 387, O.S.L. 1992, as renumbered by Section 54, Chapter 242, O.S.L. 1994, 840.22, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 13, Chapter 310, O.S.L. 1995 and 841.16, as amended by Section 18, Chapter 367, O.S.L. 1992, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1996, Sections 840-2.5, 840-3.1, 840-4.3 and 840-4.17), which relate to the Oklahoma Personnel Act; modifying period of time within which certain appeal may be filed; increasing required period of training for certain supervisory positions; eliminating certain duty of Administrator of Office of Personnel Management with respect to audits of positions; modifying procedures with respect to grievances by permanent classified employees; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 1991, Section 841.7, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 4, Chapter 310, O.S.L. 1995 (74 O.S. Supp. 1996, Section 840-2.5), is amended to read as follows:

Section 840-2.5 A. For purposes of this section, "agency" means any office, department, commission or institution of the state government. No officer or employee of any state agency shall prohibit or take disciplinary action against employees of such agency, whether subject to the provisions of the Merit System or in unclassified service, for:

1. Disclosing public information;

2. Reporting any violation of state or federal law, rule or policy; mismanagement; a gross waste of public funds; an abuse of authority; or a substantial and specific danger to public health or safety;

3. Reporting such information without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command;

4. Discussing the operations and functions of the agency, either specifically or generally, with the Governor, members of the Legislature or others.

B. Any person who has authority to take, direct others to take, recommend or approve any personnel action shall not take or fail to take any personnel action with respect to any employee for filing an appeal with the Oklahoma Merit Protection Commission. This section shall not be construed as prohibiting disciplinary action of an employee who discloses information which the employee:

1. Knows to be false;

2. Knowingly and willfully discloses with reckless disregard for its truth or falsity; or

3. Knows to be confidential pursuant to law.

C. Each state agency, department, institution, board and commission in all branches of state government, including all institutions in The Oklahoma State System of Higher Education, shall prominently post a copy of this section of law in locations where it can reasonably be expected to come to the attention of all employees.

D. As used in this section:

1. "Disciplinary action" means any direct or indirect form of discipline, any dismissal, demotion, transfer, reassignment, suspension, reprimand, admonishment, warning of possible dismissal, reduction in force, reduction in rank, reduction in status, or withholding of work; and

2. "Probation" means that period of time, after an officer or employee is found to have violated the provisions of this section and corrective action is ordered, during which time that officer's

or employee's performance and conduct is being monitored by the employing agency for further violations of the Oklahoma Personnel Act.

E. Any employee or any former employee aggrieved pursuant to this section may file an appeal with the Oklahoma Merit Protection Commission within ~~thirty (30)~~ sixty (60) days of the alleged disciplinary action. The Oklahoma Merit Protection Commission shall promulgate rules to establish procedures for the conduct of investigations. If, after investigation, the Executive Director determines a violation of this section may have occurred, the Executive Director shall appoint a hearing examiner to hear the case as provided for in Section ~~841.15~~ 840-6.6 of this title.

F. If, after the hearing, it is determined that a violation has occurred, the Commission or hearing examiner shall order corrective action pursuant to Section 841.15 of this title. Such corrective action shall include, but not be limited to, suspension without pay, demotion or discharge. Any employee found to have violated this section of law, in addition to being suspended or demoted, shall be placed on probation for six (6) months. Such probation shall commence on the date of the final decision filed by the Commission. Any employee who is determined to have violated the Oklahoma Personnel Act, Section ~~840.1~~ 840-1.1 et seq. of this title, while serving said probation shall forfeit his position for one (1) year. Any employee, supervisor or appointing authority of any state agency, whether subject to the provisions of the Merit System of Personnel Administration or in unclassified service, who knowingly and willfully violates the provisions of this section shall forfeit his position and be ineligible for appointment to or employment in a position in state service for a period of at least one (1) year and no more than five (5) years, and the Merit Protection Commission shall also refer the matter to the local district attorney for action pursuant to Section ~~841.23~~ 840-6.9 of this title. The decision of the Commission in such cases may be appealed by any party pursuant to Article II of the Administrative Procedures Act, Sections ~~309~~ 308a through 323 of Title 75 of the Oklahoma Statutes.

SECTION 2. AMENDATORY Section 1, Chapter 387, O.S.L. 1992, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1996, Section 840-3.1), is amended to read as follows:

Section 840-3.1 A. Each supervisor employed as of January 1, 1993, by a state agency, board or commission in the executive branch of state government, excluding those within The Oklahoma State System of Higher Education, shall attend, prior to December 31, 1993, a training program for supervisory personnel. The training program shall be established pursuant to subsection D of this section.

B. Employees appointed to supervisory positions after January 1, 1993, shall complete training pursuant to subsection D of this section within six (6) months of assuming such supervisory position. Thereafter, supervisors are required to complete ~~sixteen (16)~~ thirty-two (32) hours of training pursuant to subsection D of this section each year. The appointing authority of each agency shall ensure each supervisory employee is notified and scheduled to attend such required training and shall make time available for each such employee to complete the training.

C. As used in this section "supervisor" means a classified or unclassified employee who has been assigned authority and responsibility for all of the following functions on a continuous and uninterrupted basis with respect to subordinates:

1. Assigning work to subordinates and making sure work is performed correctly and in a timely manner;
2. Training subordinates in the performance of their assigned duties or planning and directing such training through subordinates;
3. Reviewing work performance of subordinates; and
4. Participating in determining appropriate personnel actions regarding subordinates such as performance appraisal, discipline, and corrective action.

D. 1. The Office of Personnel Management shall promulgate any rules necessary to develop and implement training programs for supervisory personnel which shall include areas such as: supervisory skills, affirmative action and equal employment

opportunity, selection, performance appraisal, employee assistance, corrective discipline, and other legal and ethical issues relevant to supervisors.

2. Training programs for supervisors under this act may be approved by the Office of Personnel Management; provided, however, such programs shall be subject to standards developed by the Office of Personnel Management. All state agencies, boards and commissions may participate in any such government employee training program established by an institution that is a member of The Oklahoma State System of Higher Education and approved by the Office of Personnel Management as provided for in this paragraph.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 840.22, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 13, Chapter 310, O.S.L. 1995 (74 O.S. Supp. 1996, Section 840-4.3), is amended to read as follows:

Section 840-4.3 A. The Office of Personnel Management shall conduct audits of positions in the classified service to ensure that positions are properly allocated, and may delegate the auditing function to an agency pursuant to paragraph 5 of subsection D of Section 840-1.15 of this title. Appointing authorities have control of positions within their agency and have the authority to organize their agencies, to create positions, to abolish positions and to prescribe or change the duties and responsibilities assigned to any position or employee at any time. ~~The Administrator of the Office of Personnel Management shall be responsible for establishing a procedure for conducting and resolving position audits to ensure compliance with the provisions of the Oklahoma Personnel Act and the rules and orders promulgated thereunder. Such procedure shall assure prompt and impartial review of a final allocation of a position which is in dispute and guarantee each party an opportunity to present evidence and to otherwise be heard. The audit procedure, including the impartial review process, shall be exempt from Article II of the Oklahoma Administrative Procedures Act.~~ Individual audits of positions shall be conducted at the request of the appointing authority based on information provided by the agency. An incumbent

employee will be given an opportunity to respond; however, the Office of Personnel Management will rely on the appointing authority for an official listing of the duties and responsibilities of the position.

B. The appointing authority has the responsibility to ensure that employees are properly classified and that the work performed conforms to the appropriate class specification describing the position. Employees shall be classified in accordance with the work they are assigned on a regular and consistent basis as an integral part of their normal work assignment and class specification. An employee has the right and responsibility to file a classification grievance, as provided by law and rule, when duties performed on a regular and consistent basis do not conform to the class specification. An employee is entitled to the compensation assigned to the class specification for which duties were performed on a regular and consistent basis as determined by the Office of Personnel Management. This provision does not entitle the employee to a higher classification.

C. Class specifications shall be used for the purpose of distinguishing one job classification from another as clearly and definitively as possible in order that positions may be properly allocated and employees may be properly classified in accordance with this section. Class specifications shall be applied in accordance with the following:

1. The position description questionnaire and class specification shall be interpreted and applied as a composite picture of the job requirements. An employee is not required to perform all of the work operations described in a class specification in order to be eligible for classification thereunder. An employee is not eligible or entitled to classification by reason of performing isolated or singular duties incidental to the job but which are described in another class specification. Employees are entitled to the classification they are currently assigned.

2. An employee normally performs some of the work of higher-rated jobs and some of the work of lower-rated jobs when required.

The normal duties of an employee may include some of the work of related jobs in the same salary grade when required. The normal duties of an employee may include assistance to others.

3. An employee is required to perform the work operations and duties described or appraised as being covered by a class specification pursuant to that degree or amount of guidance or instruction which is considered regular and consistent in order to qualify for the classification.

SECTION 4. AMENDATORY 74 O.S. 1991, Section 841.16, as amended by Section 18, Chapter 367, O.S.L. 1992, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1996, Section 840-4.17), is amended to read as follows:

Section 840-4.17 A. Each agency shall adopt and maintain a system of employee service ratings. The Office of Personnel Management shall make available a standard system for this purpose, but an appointing authority may develop a separate system, subject to approval of the Administrator of the Office of Personnel Management. The purpose of the system of employee service rating is to evaluate the performance of each regular classified, unclassified and exempt employee in the executive branch of state government except those in the exempt unclassified service as specified in paragraphs 1 and 2 of Section ~~840-8~~ 840-5.5 of this title and those employees employed by the institutions under the administrative authority of The Oklahoma State System of Higher Education. The Administrator of the Office of Personnel Management, on or before January 1 of each year, shall submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor identifying those state agencies that have complied with the provisions of this section.

B. The system shall provide for the following:

1. An objective evaluation of the employee, by the immediate supervisor, of the performance of the employee within the assigned duties of the job;

2. The identification of the strengths and deficiencies of the employee;

3. Corrective actions, if necessary, to correct deficiencies;
4. An interview with the employee by the immediate supervisor who shall provide the employee with a copy of the service ratings; and

5. The opportunity for the employee to submit written comments regarding the service rating.

C. Each employee shall be rated thirty (30) days prior to the end of the probationary period. Thereafter, each employee shall be rated no less than once each year.

D. Any permanent classified employee who disagrees with his or her individual service rating, or with any comments made in connection with the service rating which are incorporated into the document establishing the service rating or which are incorporated by reference into the document establishing the service rating, may file a grievance pursuant to Section ~~841-9~~ 840-6.2 of this title. Any employee, regardless of status, who is required to be rated pursuant to this section and who disagrees with his or her individual service rating, or with any other matter which may be the subject of a grievance pursuant to this subsection, may file a complaint through any other dispute resolution process made available through the employing agency or the Oklahoma Merit Protection Commission. The Oklahoma Merit Protection Commission shall not have jurisdiction to investigate or hear appeals of individual service ratings.

E. The agency shall use the service ratings of employees in decisions regarding promotions, demotions, performance pay increases and discharges. Reductions-in-force shall not be considered discharges.

F. The agency shall retain a copy of the service rating for each employee of the agency. A copy of the service rating shall be furnished to the Administrator of the Office of Personnel Management for review to determine compliance with the provisions of this section and shall be retained in the file on the employee.

SECTION 5. This act shall become effective July 1, 1997.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency
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is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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