

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 404

By: Stipe of the Senate

and

6 Mass of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to state employees, amending 74 O.S.
12 1991, Sections 840-1.3, as last amended by Section 1,
13 Chapter 256, O.S.L. 1998, 840.19, as renumbered by
14 Section 54, Chapter 242, O.S.L. 1994, and as last
15 amended by Section 35 of Enrolled House Bill No. 1845
16 of the 1st Session of the 47th Oklahoma Legislature
17 and 841.19, as renumbered by Section 54, Chapter 242,
18 O.S.L. 1994 (74 O.S. Supp. 1998, Sections 840-1.3 and
19 840-4.15), which relate to promotional examinations;
20 modifying definition of promotional examination;
21 requiring plans for promotion be reviewed by the
22 Office of Personnel Management; specifying that
23 agency contact the Office of Personnel Management
24 upon a vacancy; providing for development of
25 examinations; providing for notice; deleting filing
26 requirement of promotional plans; modifying purpose;
27 providing notice time period; deleting redundant
28 language; modifying content of notice; deleting
29 provisions concerning certain postings; deleting list
30 and availability requirements; deleting grievance and
31 discrimination provisions; and providing an effective
32 date.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 840-1.3, as
last amended by Section 1, Chapter 256, O.S.L. 1998 (74 O.S. Supp.
1998, Section 840-1.3), is amended to read as follows:

Section 840-1.3 As used in the Oklahoma Personnel Act, unless
otherwise provided in Sections 840-1.1 through 840-6.9 of this
title:

1. "Agency" means any office, department, board, commission or
institution of the executive branch of state government;

- 1 2. "Employee" or "state employee" means an elected or appointed
2 officer or employee of an agency unless otherwise indicated;
- 3 3. "Appointing authority" means the chief administrative
4 officer of an agency;
- 5 4. "Class" or "class of positions" means positions that are
6 sufficiently similar in duties, levels of responsibility, and
7 requirements of the work to warrant similar treatment as to title,
8 pay grade, and minimum qualifications;
- 9 5. "Class specification" means a written document that
10 describes a class;
- 11 6. "Classification plan" means the orderly arrangement of
12 positions within an agency into separate and distinct classes so
13 that each class will contain those positions which involve similar
14 or comparable skills, duties and responsibilities;
- 15 7. "Classified service" means state employees and positions
16 under the jurisdiction of the Oklahoma Merit System of Personnel
17 Administration;
- 18 8. "Entrance examination" means any employment test used by the
19 Office of Personnel Management to rank the names of applicants who
20 possess the minimum requirements of education, experience, or
21 licensure for a class on a register of eligibles established by the
22 Office of Personnel Management;
- 23 9. "Promotional examination" means any employment test
24 ~~designated~~ developed and validated pursuant to Section 840-4.12 of
25 this title by the Office of Personnel Management to determine
26 further the qualifications of a permanent classified employee of a
27 state agency for employment in a different class for which the
28 employee possesses the minimum qualifications of education,
29 experience, or licensure within that agency;
- 30 10. "Interagency transfer" means an action in which an employee
31 leaves employment with one agency and enters employment with another
32 agency while continuously employed with the state;

1 11. "Intra-agency transfer" means moving an employee from one
2 position to another position with the same agency either with or
3 without reclassification;

4 12. "Job-related organization" means a membership association
5 which collects annual dues, conducts annual meetings and provides
6 job-related education for its members and which includes state
7 employees, including any association for which payroll deductions
8 for membership dues are authorized pursuant to paragraph 5 of
9 subsection B of Section 7.10 of Title 62 of the Oklahoma Statutes;

10 13. "Lateral transfer" means reclassification of an employee to
11 another class with the same salary grade;

12 14. "Merit Rules" or "Merit Rules for Employment" or "Merit
13 System of Personnel Administration Rules" means rules adopted by the
14 Administrator of the Office of Personnel Management or the Oklahoma
15 Merit Protection Commission pursuant to the Oklahoma Personnel Act;

16 15. "Noncompetitive appointment" means the appointment of a
17 person to a noncompetitive class;

18 16. "Noncompetitive class" means a class of positions of
19 unskilled or semiskilled labor or a similar class designated by the
20 Office of Personnel Management as noncompetitive;

21 17. "Permanent classified employee" means a classified service
22 employee who has acquired permanent status in accordance with the
23 Oklahoma Personnel Act, and rules adopted pursuant thereto, and who
24 has the right to appeal involuntary demotion, suspension without
25 pay, and discharge to the Commission;

26 18. "Presiding official" means a person serving the Oklahoma
27 Merit Protection Commission in the capacity of administrative
28 hearing officer, mediator, or other alternative dispute resolution
29 arbitrator or facilitator;

30 19. "Progressive discipline" means a system designed to ensure
31 the consistency, impartiality and predictability of discipline and
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1 the flexibility to vary penalties if justified by aggravating or
2 mitigating conditions;

3 20. "Regular and consistent" means, in connection with the work
4 assignments of an employee, the usual and normal work assignments of
5 the employee, excluding incidental, casual, or occasional tasks and
6 activities the employee assumes without direction to do so.

7 Temporary work assignments of less than sixty (60) days in any
8 twelve (12) consecutive months period shall not be considered
9 regular and consistent;

10 21. "Regular unclassified service employee" means an
11 unclassified service employee who is not on a temporary or other
12 time-limited appointment;

13 22. "Unclassified service" or "exempt service" means employees
14 and positions excluded from coverage of the Oklahoma Merit System of
15 Personnel Administration;

16 23. "Merit System" means the Oklahoma Merit System of Personnel
17 Administration;

18 24. "Administrator" means the appointing authority of the
19 Office of Personnel Management;

20 25. "Executive Director" means the appointing authority of the
21 Oklahoma Merit Protection Commission;

22 26. "Office" means the Office of Personnel Management;

23 27. "Commission" means the Oklahoma Merit Protection
24 Commission;

25 28. "Veteran" means a person who has been honorably discharged
26 from the Armed Forces of the United States and has been a resident
27 of Oklahoma for at least one (1) year prior to the date of the
28 examination; and

29 29. "Voluntary out" means the voluntary separation of employees
30 from the state service in exchange for benefits offered by an agency
31 in order to reduce or eliminate the adverse impact of an imminent
32 reduction-in-force.

1 SECTION 2. AMENDATORY 74 O.S. 1991, Section 840.19, as
2 renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last
3 amended by Section 35 of Enrolled House Bill No. 1845 of the 1st
4 Session of the 47th Oklahoma Legislature, is amended to read as
5 follows:

6 Section 840-4.12 A. The Administrator of the Office of
7 Personnel Management shall be responsible for conducting promotional
8 examinations and entrance examinations as required under the
9 Oklahoma Personnel Act. Such examinations shall be of such
10 character as to determine the qualifications, fitness and ability of
11 the persons tested to perform the duties of the class of positions
12 for which such tests or examinations are given. Provided, however,
13 tests and examinations of persons with severe disabilities who have
14 satisfactorily completed vocational and technical education courses
15 in vocational training units or divisions approved by the Department
16 of Rehabilitation Services shall be limited in scope so as to relate
17 to the skill and physical capability required for a particular
18 position. Adequate public notice shall be given of all examinations
19 except for promotion within a department or agency.

20 B. No person shall be required to take an entrance examination
21 if that person has been previously tested and licensed by the State
22 of Oklahoma; such person shall be rated according to training and
23 experience.

24 C. No entrance examination shall be required when the job
25 specifications require a bachelor's degree or its equivalent, plus
26 three (3) years of qualifying work experience; such person shall be
27 rated according to training and experience.

28 D. Promotional examinations for promotion within an agency,
29 unless requested by the agency, shall not be required; provided that
30 said promotion is in accordance with rules adopted by the
31 Administrator and is in accordance with a plan adopted by the
32 promoting agency.

1 Every employee promoted within an agency shall serve a six-month
2 trial period in the class to which the employee is promoted, unless
3 the trial period is waived, in writing, by the appointing authority.
4 At any time during a trial period, the appointing authority may
5 return the employee to the class from which the employee was
6 promoted upon written notification to the employee as to such action
7 and the reason therefor, and the employee shall not have the right
8 to appeal.

9 E. Plans for promotion within state agencies shall be reviewed
10 and approved by the Office of Personnel Management.

11 F. The Administrator shall accept Certificates of Proficiency
12 issued by accredited private or public schools, colleges or the
13 Oklahoma Employment Security Commission in lieu of typing and
14 shorthand tests.

15 ~~F.~~ G. The Office of Personnel Management shall certify that a
16 candidate meets the necessary job qualifications of a classification
17 in the classified service for the purpose of allowing that candidate
18 to be appointed to a position in that class. The Administrator of
19 the Office of Personnel Management may delegate the certification
20 function provided by this section to an agency pursuant to
21 subsection E of Section 840-1.15 of this title. Any statute which
22 creates any position or qualifications for any position in the
23 classified service shall not be construed to limit the power of the
24 Administrator to interpret or add to those qualifications in a
25 reasonable manner consistent with the intent of the Legislature and
26 the duties of that position. Any statute which empowers any agency
27 head or other employer to hire or nominate persons for employment
28 within the classified service shall not be construed to empower that
29 agency head or other employer to waive or modify any qualification
30 or rule for employment established by the Administrator. The
31 Administrator shall not be construed to have the authority to limit
32 or reduce any qualification established by statute for any position.

1 The constructions established herein shall apply to any statutes or
2 positions heretofore or hereafter created unless that statute
3 clearly and specifically states that such constructions do not
4 apply.

5 ~~G.~~ H. Subsections A through ~~F~~ G of this section shall not apply
6 to special disabled veterans who are considered for employment under
7 the provisions of Sections 401 through 404 of Title 72 of the
8 Oklahoma Statutes. Provided, said veterans may elect instead to be
9 considered for employment according to the procedures set out in
10 subsections A through ~~F~~ G of this section.

11 ~~H.~~ I. Subsections A through ~~F~~ G of this section shall not apply
12 to persons with severe disabilities who are considered for
13 employment under the provisions of this subsection. Provided, said
14 persons may elect instead to be considered for employment according
15 to the procedures set out in subsections A through ~~F~~ G of this
16 section.

17 1. As used in this subsection "persons with severe
18 disabilities" means persons certified as having disabilities
19 according to standards and procedures established by the
20 Administrator. Said standards and procedures shall be developed by
21 the Administrator of the Office of Personnel Management with the
22 assistance of the Office of Handicapped Concerns, and the Department
23 of Rehabilitation Services.

24 2. Agencies of this state may employ persons with severe
25 disabilities who are legal residents of the state in competitive and
26 noncompetitive jobs. Except for the requirement of minimum
27 qualifications specified in applicable job specifications, such
28 persons with disabilities shall be exempt from entrance examinations
29 and hiring procedures administered by the Office of Personnel
30 Management pursuant to this section and Section 840-4.13 of this
31 title.

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1 3. Persons with severe disabilities hired pursuant to this
2 subsection shall be appointed for a probationary period pursuant to
3 Section 840-4.13 of this title.

4 4. Persons with severe disabilities hired pursuant to this
5 subsection shall be subject to the rules of the Administrator of the
6 Office of Personnel Management.

7 5. The Office of Personnel Management shall maintain records
8 regarding the employment of persons with severe disabilities by
9 state agencies and shall report the number of persons so employed in
10 its annual report for the Office of Personnel Management required by
11 Section 840-1.6A of this title.

12 ~~I.~~ J. 1. This subsection shall be known and may be cited as
13 the "Fair Employment Practices Act".

14 2. Agencies of this state may use the optional hiring procedure
15 provided in this subsection to employ females, blacks, Hispanics,
16 Asian/Pacific Islanders and American Indians/Alaskan natives, as
17 defined by the Equal Employment Opportunity Commission, who are
18 legal residents of the state in competitive and noncompetitive jobs.
19 Individuals must meet the minimum qualifications and pass any
20 required examinations established by the Office of Personnel
21 Management or by statute. Except for any required examinations and
22 minimum qualifications specified in applicable job specifications,
23 such persons shall be exempt from the hiring procedures administered
24 by the Office of Personnel Management. Persons may only be employed
25 under this subsection in a job class, group or category which has
26 been identified as underutilized and in which an appropriate hiring
27 goal has been set in the state agency's affirmative action plan
28 approved by the Office of Personnel Management pursuant to the
29 provisions of Section 840-2.1 of this title. In addition, the
30 appointing authority of the employing agency must determine that a
31 manifest imbalance exists which justifies remedial action pursuant
32 to this subsection in order to reach the affirmative action hiring

1 goal. Provided further, that eligible war veterans, as defined by
2 Section 67.13a of Title 72 of the Oklahoma Statutes, who are members
3 of the group for which a hiring goal has been set shall be
4 considered by the employing agency before a nonveteran is appointed
5 pursuant to this subsection.

6 3. To be eligible for appointment, the persons who are members
7 of the group for which a hiring goal has been set must score within
8 the top ten scores of other available members of said group based on
9 any examination or rating of education and experience.

10 4. Persons hired pursuant to this subsection shall be appointed
11 for a probationary period pursuant to Section 840-4.13 of this
12 title.

13 5. Upon acquiring permanent status, the employee shall be
14 subject to the rules and regulations of the Office of Personnel
15 Management and to full rights and entitlements of state employees in
16 the classified service.

17 6. The authority for an agency to make appointments pursuant to
18 this subsection shall be temporary and shall cease when the
19 appointing authority of an agency can no longer justify remedial
20 action pursuant to this subsection.

21 7. The Office of Personnel Management shall maintain records
22 regarding the employment of persons by state agencies pursuant to
23 this subsection and shall report the number of persons so employed
24 in its annual report for the Office of Personnel Management required
25 by Section 840-1.6A of this title.

26 SECTION 3. AMENDATORY 74 O.S. 1991, Section 841.19, as
27 renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp.
28 1998, Section 840-4.15), is amended to read as follows:

29 Section 840-4.15 A. An agency shall contact the Office of
30 Personnel Management when it seeks to fill a classified position
31 vacancy. The Office of Personnel Management shall develop a written
32 and oral examination pursuant to Section 840-4.12 of this title.

1 The appointing authority shall post vacancy or vacancies notice(s)
2 ~~in a~~ for the particular class of positions position(s) it seeks to
3 fill in accordance with a promotional plan filed by the agency with
4 ~~the Office of Personnel Management.~~ In order to give qualified
5 employees an opportunity to ~~apply~~ sit for the written examination
6 and be considered for possible promotions, the vacancy notices shall
7 be posted conspicuously in transparent, secured enclosures situated
8 in prominent locations throughout the agency, at least ~~five (5)~~
9 thirty (30) working days prior to the ~~closing date for the receipt~~
10 ~~of applications by the appointing authority.~~ Each agency's
11 ~~promotional posting plan shall describe where promotional notices~~
12 ~~will be posted and require that all vacancy or promotional notices~~
13 ~~be posted conspicuously in transparent, secured enclosures~~ written
14 examination. Notices must be posted throughout the agency.

15 However, an ~~agency's plan~~ agency may limit the posting of notices
16 for a vacancy in a work unit, local office or administrative area to
17 within that location, if the vacancy is to be filled by an employee
18 from the same location. The ~~posting~~ notice shall include:

- 19 1. A copy of the class specification;
- 20 2. The salary grade and range;
- 21 3. The anticipated number of vacancies;
- 22 4. The specific location of work;
- 23 5. The time limits and procedure for filing an application with
24 the appointing authority; ~~and~~
- 25 6. Any additional factors which the appointing authority will
26 consider in filling the vacancy;
- 27 7. The time, date, and place where the written examination
28 shall be held; and
- 29 8. A list of sources from which the examination questions will
30 be taken.

31 ~~B. The appointing authority may elect to post general~~
32 ~~promotional opportunities in accordance with the provisions of this~~

1 ~~section in cases where there are usually continuous multiple vacant~~
2 ~~positions within a given class of positions; provided the appointing~~
3 ~~authority maintains a promotional applicant list for each class of~~
4 ~~positions which is posted on the basis of general promotional~~
5 ~~opportunities. In such cases, the posting must include the length~~
6 ~~of time and conditions under which the promotional application of~~
7 ~~the candidate will remain available for active consideration by the~~
8 ~~appointing authority.~~

9 C. ~~If an employee still feels that he or she has not been~~
10 ~~treated fairly with regard to a promotional action after such~~
11 ~~complaint has been reviewed in a formal grievance procedure~~
12 ~~conducted in accordance with the provisions of Section 841.9 of this~~
13 ~~title, the employee may seek a remedy through the procedures~~
14 ~~established in this act. If a violation of Section 841.10 of this~~
15 ~~title has been committed, the Oklahoma Merit Protection Commission~~
16 ~~may declare a position open.~~

17 SECTION 4. This act shall become effective November 1, 1999.

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