

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 404

By: Stipe

AS INTRODUCED

An Act relating to state employees; amending 74 O.S. 1991, Sections 840-1.3, as last amended by Section 1, Chapter 256, O.S.L. 1998, 840-4.12, as last amended by Section 32, Chapter 364, O.S.L. 1998, and 841.19, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1998, Sections 840-1.3, 840-4.12, and 840-4.15), which relate to promotional examinations; modifying definition of promotional examination; mandating promotional examinations; providing for written and oral examinations; providing for the Office of Personnel Management to develop and validate promotional examinations; providing for consultation with agency and labor organizations; providing for procedure; requiring participants be given identical written examinations; specifying content of examinations; designating place of examinations; making provisions for grading examinations; requiring the Office of Personnel Management to send list of grades to agency; providing for posting of list; providing oral examination of certain participants; specifying number and qualifications of oral examination interviewers; providing selection of oral examination interviewers; providing notice to labor organizations; specifying how oral examination is to be conducted; providing for scoring and averaging of score; allowing review of scores; providing for redaction; requiring the Office of Personnel Management provide list of scores to agency; providing for composite score; defining seniority points; requiring agency to add seniority points to score; requiring agency establish list of participants and provide ranking; providing for selection of participants; extending use of list for selection purposes; allowing selection of top three persons on list; providing for show cause; allowing grievance appeal; providing recourse for discrimination; granting responsibility for examination security to the Office of Personnel Management; specifying that agency contact the Office of Personnel Management upon a vacancy; providing for development of examinations; providing for notice; deleting filing requirement of promotional plans; modifying purpose; providing notice time period; deleting redundant language; modifying content of notice; deleting provisions concerning certain postings; deleting list and availability requirements; deleting grievance and discrimination provisions; and providing an effective 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;
2. "Employee" or "state employee" means an elected or appointed officer or employee of an agency unless otherwise indicated;
3. "Appointing authority" means the chief administrative officer of an agency;
4. "Class" or "class of positions" means positions that are sufficiently similar in duties, levels of responsibility, and requirements of the work to warrant similar treatment as to title, pay grade, and minimum qualifications;
5. "Class specification" means a written document that describes a class;
6. "Classification plan" means the orderly arrangement of positions within an agency into separate and distinct classes so that each class will contain those positions which involve similar or comparable skills, duties and responsibilities;
7. "Classified service" means state employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration;
8. "Entrance examination" means any employment test used by the Office of Personnel Management to rank the names of applicants who possess the minimum requirements of education, experience, or licensure for a class on a register of eligibles established by the Office of Personnel Management;

9. "Promotional examination" means any employment test ~~designated~~ developed and validated pursuant to Section 840-4.12 of this title by the Office of Personnel Management to determine further the qualifications of a permanent classified employee of a state agency for employment in a different class for which the employee possesses the minimum qualifications of education, experience, or licensure within that agency;

10. "Interagency transfer" means an action in which an employee leaves employment with one agency and enters employment with another agency while continuously employed with the state;

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

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

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

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

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

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

17. "Permanent classified employee" means a classified service employee who has acquired permanent status in accordance with the

Oklahoma Personnel Act, and rules adopted pursuant thereto, and who has the right to appeal involuntary demotion, suspension without pay, and discharge to the Commission;

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

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

20. "Regular and consistent" means, in connection with the work assignments of an employee, the usual and normal work assignments of the employee, excluding incidental, casual, or occasional tasks and activities the employee assumes without direction to do so. Temporary work assignments of less than sixty (60) days in any twelve (12) consecutive months period shall not be considered regular and consistent;

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

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

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

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

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

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

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

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

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

SECTION 2. AMENDATORY 74 O.S. 1991, Section 840-4.12, as last amended by Section 32, Chapter 364, O.S.L. 1998 (74 O.S. Supp. 1998, Section 840-4.12), is amended to read as follows:

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

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

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

D. Promotional examinations for promotion within an agency, ~~unless requested by the agency,~~ shall ~~not~~ be required; ~~provided that said promotion is~~ and shall be in accordance with the following guidelines ~~adopted by the Administrator and is in accordance with a plan adopted by the promoting agency.:~~

1. Written Examination:

- a. Upon contact by an agency pursuant to Section 840-4.15 of this title, a written examination shall be developed and validated by the Office of Personnel Management (OPM), with consultation from the agency and any labor organization that holds payroll deduction rights with the State of Oklahoma.
- b. Each participant shall be given an identical examination in the presence of other participants.
- c. The examination questions must test the knowledge of the participants and be based on the duties of the classification for which the examination is held; material that is of reasonable current publication and that has been made reasonable available to each eligible participant; and any study course given by the agency. Further, the examination questions must be taken from the sources posted as prescribed in Section 840-4.15 of this title.
- d. The written examination shall be conducted at either the Office of Personnel Management in Oklahoma City or at an Oklahoma Employment Security Commission "OPEN" office in Tulsa and shall be monitored by the Office of Personnel Management.

- e. Grading of the written examination shall be done promptly and in the presence of the participants. The grade shall be determined entirely by the correctness of the candidate's answers to the questions. Each participant's grade shall be based upon a 100 point scale with 70 points equaling a passing grade.
- f. Within forty-eight (48) hours after the written examination, the Office of Personnel Management shall send a list of the grades to the agency and the agency shall post the grades conspicuously in the same location as it posted the vacancy notice pursuant to Section 840-4.15 of this title.

2. Oral Examination:

- a. Within thirty (30) days after the written examination grades have been sent to the agency, the agency shall call the participants who made a passing grade for an oral examination. The oral examination shall take place at the agency.
- b. The questions for each oral examination, and the criteria for evaluating the responses, shall be developed and validated by the Office of Personnel Management with consultation from the agency and any labor organization that holds payroll deduction rights with the State of Oklahoma.
- c. There shall be five interviewers to conduct the oral examination. Each interviewer shall be at least one classification above the classification of the position(s) sought to be filled and shall have served in that higher classification for a minimum of two (2) consecutive years.
- d. The Office of Personnel Management shall select the interviewers from eligible candidates by a random

drawing of names. The selection process may be observed by a representative of any labor organization that holds payroll deduction rights with the State of Oklahoma. Labor organizations shall be notified at least five (5) days in advance of the selection of the interviewers.

- e. The interviewers shall ask all participants the same questions and shall rate the candidates' responses based upon the criteria established for evaluating responses.
- f. Each participant's grade shall be based upon a 30 point scale. The highest and lowest scores of the interviewers shall be discarded, and the average of the scores of the other three interviewers shall be the participant's grade for the oral examination.
- g. Any participant may review the scores of his or her oral examination. The names of the interviewers shall be redacted for such review.
- h. Within forty-eight (48) hours after the oral examination has been completed, the Office of Personnel Management shall tabulate the participants' final score based upon the requirements in this section, and post the final score with the agency.

3. Selection:

- a. The written and oral examination scores shall be added to together for a composite score.
- b. The agency shall give each participant one point for every year of service with the agency, up to a maximum of ten (10) points. The seniority points shall then be added to the composite score, and such score shall be the participant's final score.

- c. A list of participants shall be established by the agency, ranking such participants from highest to lowest composite scores, including seniority points. The list shall be valid for the current vacancy or any other vacancy thereafter for that classification for one year from the date of the posting of the list, or until the list is exhausted, whichever comes first. For any vacancy in a classification for which a list has been posted, the agency may select any of the top three persons on the list. In the event that the agency passes over any participant to promote another participant with a lower combination of composite score and seniority points, the agency must show cause for the pass over. A participant who is passed over may appeal the pass over to the Merit Protection Commission pursuant to Section 840-6.6 of this title. If a violation of Section 840-2.9 of this title has been committed, the Oklahoma Merit Protection Commission may declare a position open.
- d. The Office of Personnel Management shall be responsible for the security of each promotional examination.

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

F. The Office of Personnel Management shall certify that a candidate meets the necessary job qualifications of a classification in the classified service for the purpose of allowing that candidate to be appointed to a position in that class. The Administrator of the Office of Personnel Management may delegate the certification function provided by this section to an agency pursuant to

subsection E of Section 840-1.15 of this title. Any statute which creates any position or qualifications for any position in the classified service shall not be construed to limit the power of the Administrator to interpret or add to those qualifications in a reasonable manner consistent with the intent of the Legislature and the duties of that position. Any statute which empowers any agency head or other employer to hire or nominate persons for employment within the classified service shall not be construed to empower that agency head or other employer to waive or modify any qualification or rule for employment established by the Administrator. The Administrator shall not be construed to have the authority to limit or reduce any qualification established by statute for any position. The constructions established herein shall apply to any statutes or positions heretofore or hereafter created unless that statute clearly and specifically states that such constructions do not apply.

G. Subsections A, B, C, D, E and F of this section shall not apply to special disabled veterans who are considered for employment under the provisions of Sections 401 through 404 of Title 72 of the Oklahoma Statutes. Provided, said veterans may elect instead to be considered for employment according to the procedures set out in subsections A through F of this section.

H. Subsections A, B, C, D, E and F of this section shall not apply to persons with severe disabilities who are considered for employment under the provisions of this subsection. Provided, said persons may elect instead to be considered for employment according to the procedures set out in subsections A through F of this section.

1. As used in this subsection "persons with severe disabilities" means persons certified as having disabilities according to standards and procedures established by the Administrator. Said standards and procedures shall be developed by

the Administrator of the Office of Personnel Management with the assistance of the Office of Handicapped Concerns, and the Department of Rehabilitation Services.

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

3. Persons with severe disabilities hired pursuant to this subsection shall be appointed for a probationary period of six (6) months. At the end of the probationary period if the work of said person with severe disabilities is satisfactorily performed, the person with a severe disability shall acquire permanent status.

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

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

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

2. Agencies of this state may use the optional hiring procedure provided in this subsection to employ females, blacks, Hispanics, Asian/Pacific Islanders and American Indians/Alaskan natives, as defined by the Equal Employment Opportunity Commission, who are legal residents of the state in competitive and noncompetitive jobs. Individuals must meet the minimum qualifications and pass any

required examinations established by the Office of Personnel Management or by statute. Except for any required examinations and minimum qualifications specified in applicable job specifications, such persons shall be exempt from the hiring procedures administered by the Office of Personnel Management. Persons may only be employed under this subsection in a job class, group or category which has been identified as underutilized and in which an appropriate hiring goal has been set in the state agency's affirmative action plan approved by the Office of Personnel Management pursuant to the provisions of Section 840-2.1 of this title. In addition, the appointing authority of the employing agency must determine that a manifest imbalance exists which justifies remedial action pursuant to this subsection in order to reach the affirmative action hiring goal. Provided further, that eligible war veterans, as defined by Section 67.13a of Title 72 of the Oklahoma Statutes, who are members of the group for which a hiring goal has been set shall be considered by the employing agency before a nonveteran is appointed pursuant to this subsection.

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

4. Persons hired pursuant to this subsection shall be appointed for a probationary period of six (6) months, except that the appointing authority may extend a probationary period, not to exceed a total of nine (9) months for an individual, provided, however, that the employee and the Administrator of the Office of Personnel Management shall be notified in writing as to such action and the reason therefor. At the end of the probationary period if the work of such person is satisfactorily performed as reflected in a service rating made pursuant to Section 840-4.17 of this title, such person shall acquire permanent status.

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

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

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

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

Section 840-4.15 ~~A.~~ An agency shall contact the Office of Personnel Management when it seeks to fill a classified position vacancy. The Office of Personnel Management shall develop a written and oral examination pursuant to Section 840-4.12 of this title. The appointing authority shall post vacancy or vacancies notice(s) ~~in a~~ for the particular class of ~~positions~~ position(s) it seeks to fill ~~in accordance with a promotional plan filed by the agency with the Office of Personnel Management.~~ In order to give qualified employees an opportunity to ~~apply~~ sit for the written examination and be considered for possible promotions, the vacancy notices shall be posted conspicuously in transparent, secured enclosures situated in prominent locations throughout the agency, at least ~~five (5)~~ thirty (30) working days prior to the ~~closing date for the receipt of applications by the appointing authority.~~ ~~Each agency's promotional posting plan shall describe where promotional notices will be posted and require that all vacancy or promotional notices~~

~~be posted conspicuously in transparent, secured enclosures~~ written examination. Notices must be posted throughout the agency.

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

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

~~B. The appointing authority may elect to post general promotional opportunities in accordance with the provisions of this section in cases where there are usually continuous multiple vacant positions within a given class of positions; provided the appointing authority maintains a promotional applicant list for each class of positions which is posted on the basis of general promotional opportunities. In such cases, the posting must include the length of time and conditions under which the promotional application of the candidate will remain available for active consideration by the appointing authority.~~

~~C. If an employee still feels that he or she has not been treated fairly with regard to a promotional action after such complaint has been reviewed in a formal grievance procedure conducted in accordance with the provisions of Section 841.9 of this~~

~~title, the employee may seek a remedy through the procedures established in this act. If a violation of Section 841.10 of this title has been committed, the Oklahoma Merit Protection Commission may declare a position open.~~

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

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