STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 635 By: Dickerson

AS INTRODUCED

An Act relating to state personnel; amending 72 O.S. 1991, Section 403, as amended by Section 1, Chapter 83, O.S.L. 1993 (72 O.S. Supp. 2000, Section 403), which relates to special disabled veterans; providing consistent probationary periods; amending 74 O.S. 1991, Sections 840.3, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 2, Chapter 410, O.S.L. 1999, 840.5, as last renumbered by Section 24, Chapter 310, O.S.L. 1995, and as last amended by Section 1, Chapter 336, O.S.L. 2000, 840.16b, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 3, Chapter 336, O.S.L. 2000, Section 840.7c, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 3, Chapter 286, O.S.L. 1997, 840.7d, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 1, Chapter 298, O.S.L. 2000, 841.14, as last renumbered by Section 20, Chapter 287, O.S.L. 1997, and as last amended by Section 6, Chapter 410, O.S.L. 1999, Section 7, Chapter 287, O.S.L. 1997, as amended by Section 3, Chapter 256, O.S.L. 1998, Section 12, Chapter 287, O.S.L. 1997, as amended by Section 5, Chapter 256, O.S.L. 1998, Section 1, Chapter 387, O.S.L. 1992, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 7, Chapter 410, O.S.L. 1999, Section 840.19, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 7, Chapter 336, O.S.L. 2000, Section 841.16, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 18, Chapter 410, O.S.L. 1999 (74 O.S. Supp. 2000, Sections 840-1.3, 840-1.6A, 840-2.17, 840-2.22, 840-2.23, 840-2.27C, 840-2.27D, 840-2.28, 840-3.1, 840-4.12, and 840-4.17), which relate to the Oklahoma Personnel Act; providing definition of supervisor; authorizing the Administrator of the Office of Personnel Management to order compliance with the Oklahoma Personnel Act, Merit Rules of Personnel Administration, and other memoranda and communications; authorizes the Administrator to take certain actions; clarifying language; providing performance-based adjustments; clarifying immunity to suits brought under the Family Medical Leave Act; Extending shared leave for certain deaths; providing consistency in probation periods for certain personnel; requiring permission of chief administrative officer for shared leave; providing clarification; providing cap for certain death related leave; providing consistency between certain unclassified and classified personnel; striking and

moving definition to other section; allowing the Administrator to keep certain records and materials confidential; providing exception; removing requirement that agencies send to the Office of Personnel Management certain service ratings; requiring agencies to confirm compliance with certain laws; amending 74 O.S. 1991, Section 4117, which relates to incentive awards; increasing incentive award amount; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 72 O.S. 1991, Section 403, as amended by Section 1, Chapter 83, O.S.L. 1993 (72 O.S. Supp. 2000, Section 403), is amended to read as follows:

Section 403. A. Oklahoma state agencies are hereby authorized to employ special disabled veterans who are legal residents of the state in competitive and noncompetitive jobs. Such veterans shall be exempt from entrance examinations and hiring procedures administered by the Office of Personnel Management pursuant to Sections 840.19 and 840.20 of Title 74 of the Oklahoma Statutes.

B. Special disabled veterans hired pursuant to subsection A of this section 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~~ <u>one (1) year, except that the appointing authority may waive in writing the remainder of the probationary period at any time after a probationary employee has served six (6) months</u>, provided, however, that the disabled veteran 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 and if the work of said veterans is satisfactorily performed, the veterans shall acquire permanent status.

C. Upon acquiring permanent status, special disabled veterans shall be subject to the rules and regulations of the Office of Personnel Management.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 840.3, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 2, Chapter 410, O.S.L. 1999 (74 O.S. Supp. 2000, 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. "Classification" means:

a. the process of placing an employee into an appropriate job family and level within the job family, consistent with the allocation of the position to which the employee is assigned, or

b. an employee's job family and the level at which work is assigned;

5. "Classification plan" means the orderly arrangement of positions within an agency into separate and distinct job families so that each job family will contain those positions which involve similar or comparable skills, duties and responsibilities;

6. "Classified service" means state employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration;

7. "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 job or group of similar jobs on a register of eligibles established by the Office of Personnel Management;

8. "Job" means a position or job family level in a job family;

9. "Job family" means:

a. jobs which require similar core skills and involve similar work, and

b. a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the work to warrant similar treatment as to title, typical functions, knowledge, skills and abilities required, and education and experience requirements;

10. "Job family level" means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience;

11. "Job family descriptor" means a written document that:

a. describes a job family, including, but not limited to, the basic purpose, typical functions performed, various levels within the job family, and the knowledge, skills, abilities, education, and experience required for each level, and

b. identifies the pay band assigned for each level;

12. "Promotional examination" means any employment test designated 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 job for which the employee possesses the minimum qualifications of education, experience, or licensure within that agency;

13. “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;

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

15. “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;

16. “Lateral transfer” means the reclassification of an employee to another state job with the same pay band assignment as the job family level in which the employee had been classified prior to the lateral transfer;

17. “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;

18. “Noncompetitive appointment” means the appointment of a person to a noncompetitive job level within a job family;

19. “Noncompetitive job” means an unskilled or semiskilled job designated by the Office of Personnel Management as noncompetitive. Noncompetitive jobs do not require written examinations for placement on registers of eligibles;

20. “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;

21. “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;

22. “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;

23. “Reclassification” means the process of changing a classified employee from one job family to another job family or from one job family level to another job family level in the same job family, resulting in a change in the employee’s assigned job code;

24. “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;

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

26. “Supervisor” means a classified or unclassified employee who has been assigned authority and responsibility for evaluating the performance of subordinates;

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

~~27.~~ 28. “Merit System” means the Oklahoma Merit System of Personnel Administration;

~~28.~~ 29. "Administrator" means the appointing authority of the Office of Personnel Management;

~~29.~~ 30. "Executive Director" means the appointing authority of the Oklahoma Merit Protection Commission;

~~30.~~ 31. "Office" means the Office of Personnel Management;

~~31.~~ 32."Commission" means the Oklahoma Merit Protection Commission;

~~32.~~ 33. "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

~~33.~~ 34. "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 3. AMENDATORY 74 O.S. 1991, Section 840.5, as last renumbered by Section 24, Chapter 310, O.S.L. 1995, and as last amended by Section 1, Chapter 336, O.S.L. 2000 (74 O.S. Supp. 2000, Section 840-1.6A), is amended to read as follows:

Section 840-1.6A There is hereby created the Office of Personnel Management. The chief administrative officer of said Office of Personnel Management shall be the Administrator who shall be experienced in the field, theory, and application of personnel administration. The Administrator shall be appointed by the Governor with the confirmation of the Senate, and serve at the Governor's pleasure. In addition to the other duties imposed by law, the Administrator shall:

1. Be responsible for the development of an efficient and effective system of personnel administration that meets the management needs of the various agencies;

2. Effective July 1, 1995, organize the Office to provide both service and regulatory functions that are effective and efficient in

meeting the management needs of various state agencies. The Administrator is directed to establish an agency service function to assist agencies with human resource needs based upon the administrative capacity and resources of the various agencies;

3. Prepare, maintain, and revise a classified system of employment designed to assure the impartial consideration of applicants for employment and to protect state employees from arbitrary dismissal or unfair treatment;

4. Develop and maintain a classification and compensation system for all classified positions in the executive branch of state government including those established by the Oklahoma Constitution;

5. Conduct an analysis of the rates of pay prevailing in the state in the public and private sectors for comparable jobs and report the findings to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than December 1 of each year. Such analysis shall include all forms of compensation including fringe benefits;

6. Develop a program for the recruitment of qualified persons, including the administration of valid job-related nondiscriminatory selection procedures providing for competitive examinations when practical and for reasonable selection criteria when competitive examinations are not practical;

7. Implement state affirmative action policies, and assure equal employment opportunity;

8. Develop and implement a reasonable and expeditious method for referral of capable candidates for vacancies, probationary periods of employment, and the employment of individuals on other types of appointments as necessary;

9. Assist state agencies in implementing their duties and obligations pursuant to the Oklahoma Personnel Act, Section 840-1.1 et seq. of this title, and provide standard forms to the agencies if necessary;

10. Develop, in cooperation with appointing authorities, employee training programs, management training programs, a certified public manager program, a recruiting program, and a system of performance appraisals, and assist appointing authorities in the setting of productivity goals. The Administrator may establish and collect fees for participation in training programs. The Administrator is authorized to purchase awards for presentation to state employees as part of employee recognition activities sponsored by the Office of Personnel Management;

11. Establish leave and pay regulations, regulations for performance pay increases, rates for pay differentials, on-call pay, and other types of pay incentives and salary adjustments;

12. Prepare and submit an annual budget covering the costs of administering the personnel program;

13. Make an annual report regarding the work of the Office of Personnel Management;

14. Adopt and implement rules necessary to perform the duties imposed by law on the Office of Personnel Management in accordance with the provisions of the Administrative Procedures Act. All rules adopted by the Oklahoma Merit Protection Commission shall remain in full force and effect until modified by the appropriate authority;

15. Assist the Oklahoma Merit Protection Commission and the Executive Director in effectuating their duties, enforcement of the rules of the Merit System of Personnel Administration, and implementation of corrective action issued by the Commission;

16. Be responsible for the development and maintenance of a uniform occupation code system, grouped by job titles or duties, for all classified, unclassified, and exempt state positions. Said responsibility shall include the establishment of rules governing the identification, tracking, and reporting of all state positions as provided in Section 840-2.13 of this title;

17. Be responsible for advising state agencies on personnel policy and administration;

18. Establish standards for continuing training, including affirmative action, and certification of personnel professionals in the executive branch of state government, excluding institutions within The Oklahoma State System of Higher Education. Employees appointed to professional personnel positions shall complete an initial training program within six (6) months after assuming the professional personnel position. Thereafter, they shall complete annual training requirements. Each appointing authority shall ensure that all professional personnel employees are notified of, and scheduled to attend, required training programs and shall make time available for employees to complete the programs. The Administrator shall be authorized to bill agencies for the training of personnel professionals pursuant to this paragraph to recover reasonable costs associated with the training. Monies received for such training shall be deposited in the Office of Personnel Management Revolving Fund. Expenditure of such funds collected for the training shall be exempt from any expenditure limit on the Office of Personnel Management established by law; ~~and~~

19. Effective on or after November 1, 1999, implement a new classification and compensation system for classified employees that converts classes into job families and salary grades into pay bands. All classified employees shall be converted into the new job families and pay bands at the time the new classification and compensation system is implemented without loss of pay or status, and shall not have the right to appeal such conversion. The Administrator of the Office of Personnel Management shall adopt rules pursuant to Section 840-4.3 of this title which shall include a process for review by the Office of Personnel Management of internal classification grievances of job family level assignments which cannot be resolved at the agency level; and

20. Issue orders directing agencies to conform to and comply with the provisions of the Oklahoma Personnel Act, the Merit Rules of Personnel Administration, and all memoranda or other communications explaining or interpreting the Act, the Rules, and any other matter relating to the Merit System of Personnel Administration or under the jurisdiction of the Administrator of the Office of Personnel Management, and may take action pursuant to Section 840-6.9 of this title for failure to implement such orders.

SECTION 4. AMENDATORY 74 O.S. 1991, Section 840.16b, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 3, Chapter 336, O.S.L. 2000 (74 O.S. Supp. 2000, Section 840-2.17), is amended to read as follows:

Section 840-2.17 A. Unless otherwise provided by the Oklahoma Constitution, language in law which authorizes the setting or fixing of compensation, pay or salary of state officers and employees shall not be construed to authorize any agency, board, commission, department, institution, bureau, executive officer or other entity of the executive branch of state government to award, grant, give, authorize, or promise any officer or employee of the State of Oklahoma a raise, including a cost-of-living raise or any other type of raise that would be given to state employees on an across-the-board basis, except as herein provided. Such raises are prohibited unless authorized by the Legislature and by Merit System of Personnel Administration Rules promulgated by the Administrator. This prohibition applies to all classified, unclassified and exempt officers and employees in the executive branch of state government, excluding institutions under the administrative authority of the State Regents for Higher Education, and all employees in the University Hospitals Authority Model Personnel System created pursuant to Section 3211 of Title 63 of the Oklahoma Statutes.

B. However, nothing in this section shall be construed to prohibit the following actions if the action is made in good faith

and not for the purpose of circumventing subsection A of this section, and if the appointing authority certifies that the action can be implemented for the current fiscal year and the subsequent fiscal year without the need for additional funding to increase the personal services budget of the agency:

1. Salary advancements on promotion or direct reclassification to a job family level ~~or class with~~ in a higher ~~grade~~ salary band;

2. Salary adjustments resulting from a pay band change for a job family level or class adopted by the Office of Personnel Management;

3. Increases in longevity payments pursuant to Section 840-2.18 of this title;

4. Payment of overtime, special entrance rates, pay differentials;

5. Payment of wages, salaries, or rates of pay established and mandated by law;

6. Market adjustments for job family levels tied to market competitiveness;

7. ~~Intra-agency lateral~~ Lateral transfers within the same job family or to another job family and level assigned the same salary band, provided that the adjustment does not exceed five percent (5%) and the adjustment is based on the needs of the agency;

8. Skill-based adjustments;

9. Equity-based adjustments;

10. Performance-based adjustments;

11. Career progression increases as an employee advances through job family levels; or

~~11.~~ 12. Salary adjustments not to exceed five percent (5%) for probationary classified employees achieving permanent status following the initial probationary period and permanent classified employees successfully completing trial periods after promotion to a

different job family level or following career progression to a different job family level.

C. Provided, however, any reclassification for one of the purposes provided in subsection B of this section that would require additional funding by the Legislature shall not be implemented without approval of the Legislature.

D. The pay movement mechanisms described in paragraphs 6 through ~~11~~ 12 in subsection B of this section shall be implemented pursuant to rules promulgated by the Administrator of the Office of Personnel Management for the classified service.

E. Appointing authorities may implement the pay movement mechanisms in paragraphs 6 through ~~11~~ 12 in subsection B of this section subject to the availability of funds within the agency's budget for the current fiscal year and subsequent fiscal year without the need for additional funding to increase the personal services budget of the agency. Failure by the appointing authority to follow the provisions of this subsection may cause the withdrawal of the use of the pay movement mechanisms provided in paragraphs 6, 7, 9 ~~and 10~~ through 11 of subsection B of this section within the agency during the next appropriations cycle.

F. All agencies, boards, and commissions shall report to the Office of Personnel Management on an annual basis the pay movement mechanisms utilized in paragraphs 6 through ~~11~~ 12 in subsection B of this section. The report shall include the pay movement mechanisms type, frequency, amounts provided, affected classifications and job families, and other information as prescribed by the Administrator of the Office of Personnel Management. Agencies shall report this information for the twelve-month period ending December 31 for classified and unclassified employees. Agencies must also report projected pay movement mechanisms and costs anticipated for the balance of the fiscal year. The Office of Personnel Management shall forward the report, which will include findings and

recommendations, to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives no later than February 1 of each year.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 840.7c, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 3, Chapter 286, O.S.L. 1997 (74 O.S. Supp. 2000, Section 840-2.22), is amended to read as follows:

Section 80-2.22 The Administrator of the Office of Personnel Management shall promulgate emergency and permanent leave rules as necessary to implement the federal Family and Medical Leave Act of 1993 and rules thereto.

Such leave rules shall permit an employee to select any one or a combination of the following types of leave to account for authorized absences covered by the Family and Medical Leave Act of 1993: leave without pay; annual and sick leave accumulated by the employee; and annual and sick leave donated by other state employees.

The State of Oklahoma reserves absolute constitutional immunity with regard to the application of federal laws to state employees. Nothing in this section is intended to waive such immunity.

SECTION 6. AMENDATORY 74 O.S. 1991, Section 840.7d, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 1, Chapter 298, O.S.L. 2000 (74 O.S. Supp. 2000, Section 840-2.23), is amended to read as follows:

Section 840-2.23 A. There is hereby created the state leave sharing program. The purpose of the state leave sharing program is to permit state employees to donate annual or sick leave to a fellow state employee ~~who~~:

1. Who is eligible for and requires family leave~~, or who~~;

2. Who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition which has caused or is

likely to cause the employee to take leave without pay or terminate employment~~, or who~~;

3. Whose relative or household member died; or

4. Who is affected by a presidentially declared national disaster in Oklahoma after May 1, 1999, for a period of eighteen (18) months after the date of the presidentially declared national disaster if:

~~1. The~~

a. the employee suffered a physical injury as a result of the disaster~~;~~,

~~2. The~~

b. the spouse, relative, or household member of the employee suffered a physical injury or died as a result of the disaster~~;~~, or

~~3. The~~

c. the domicile of the employee or the home of a relative of the employee was damaged or destroyed as a result of the disaster.

B. As used in this section:

1. "Relative of the employee" shall be limited to the spouse, child, stepchild, grandchild, grandparent, stepparent, or parent of the employee;

2. "Household members" means those persons who reside in the same home, who have reciprocal duties to and do provide financial support for one another. This term shall include foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house, when the living style is primarily that of a dormitory or commune;

3. "Severe" or "extraordinary" means serious, extreme or life threatening; and

4. "State employee" means a permanent classified employee or a regular unclassified employee with~~ over six (6) months~~ at least one

(1) year of continuous service with the state. The term "state employee" does not include classified employees in probationary status or unclassified employees on temporary or other limited term appointments, except that those employees are eligible to receive shared leave as provided in subsection A of this section and the leave with pay authorized by Section 8 of this act related to a presidentially declared national disaster.

C. An employee may be eligible to receive shared leave pursuant to the following conditions:

1. The chief administrative officer of the employee determines that the employee meets the criteria described in this section; and

2. The employee has abided by state policies regarding the use of leave.

D. An employee may not donate annual or sick leave to an eligible employee without the permission of the chief administrative officer of the donating employee's agency.

E. An employee may donate annual or sick leave to another employee ~~only~~ pursuant to paragraph 2 of subsection A of this section only under the following conditions:

1. a. The receiving employee has exhausted, or will exhaust, all annual leave and sick leave due to an illness, injury, impairment, or physical or mental condition, which is of an extraordinary or severe nature, and involves the employee, a relative of the employee or household member, and

b. The condition has caused, or is likely to cause, the employee to go on leave without pay or terminate employment~~, and~~

~~c. The chief administrative officer of the employee permits the leave to be donated to an eligible employee~~;

2. The donating employee may donate any amount of annual or sick leave provided the donation does not cause the annual leave balance of the employee to fall below eighty (80) hours and provided the donation does not cause the sick leave balance of the employee to fall below eighty (80) hours; and

3. Employees may not donate excess annual or sick leave that the donor would not be able to otherwise take.

~~E.~~ F. The chief administrative officer of the employee shall determine the amount of donated leave an employee may receive and may only authorize an employee to use up to a maximum of two hundred sixty-one (261) days of donated leave during total state employment.

~~F.~~ G. The chief administrative officer of the employee shall require the employee to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the need for the leave and expected duration of the illness, injury, impairment, or physical or mental condition for which leave is donated.

~~G.~~ H. Donated annual or sick leave is transferable between employees in different state entities with the agreement of both chief administrative officers of the entities.

~~H.~~ I. The receiving employee shall be paid his or her regular rate of pay; therefore, one hour of donated leave may cover more or less than one hour of the salary of the recipient. The calculation of the leave value of the recipient shall be in accordance with Office of Personnel Management policies, regulations, and procedures. The dollar value of the leave is converted from the donor to the recipient. The leave received will be designated as donated leave and be maintained separately from all other leave balances.

~~I.~~ J. Any donated leave may only be used by the recipient for the purposes specified in this section.

~~J.~~ K. All forms of paid leave available for use by the recipient must be used prior to using donated leave.

~~K.~~ L. Any donated leave not used by the recipient during each occurrence as determined by the chief administrative officer of the employee shall be returned to the donor. The donated leave remaining will be divided among the donors on a prorated basis based on the original donated value and returned at its original donor value and reinstated to the original leave balance of each donor.

~~L.~~ M. All donated leave must be given voluntarily. No employee shall be coerced, threatened, intimidated, or financially induced into donating annual or sick leave for purposes of the leave sharing program.

N. Leave donated to an employee related to the death of the employee's relative or household member shall not exceed five (5) days in a twelve-month period.

SECTION 7. AMENDATORY 74 O.S. 1991, Section 841.14, as last renumbered by Section 20, Chapter 287, O.S.L. 1997, and aslast amended by Section 6, Chapter 410, O.S.L. 1999 (74 O.S. Supp. 2000, Section 840-2.27C), is amended to read as follows:

Section 840-2.27C A. Whenever a reduction-in-force occurs, the appointing authority shall provide a plan for such reduction-in-force at least sixty (60) days before the scheduled beginning of reduction-in-force separations or as otherwise provided by law. A reduction-in-force shall not be used as a disciplinary action. The reduction-in-force plan of an agency, except for the fiscal components of the plan as provided by paragraph 1 of this subsection, in the executive branch of state government is subject to the approval of the Administrator of the Office of Personnel Management who shall reject any plan that is not in substantial compliance with this section and the rules promulgated hereunder.

1. The Director of the Office of State Finance shall review the fiscal components of the plan and reject any plan that does not:

a. demonstrate that funds are available to cover projected costs,

b. contain an estimate of the number of affected employees likely to participate in the education voucher program established in Section 840-2.27D of this title, and

c. contain an estimate of the cost savings or reduced expenditures likely to be achieved by the agency.

2. If the reduction-in-force is conducted pursuant to a reorganization, the fiscal components of the reduction-in-force plan shall contain reasons for the reorganization, which may include, but not be limited to, increased efficiency, improved service delivery, or enhanced quality of service.

B. The reduction-in-force plan and subsequent personnel transactions directly related to the reduction-in-force shall be in compliance with rules adopted by the Administrator. The appointing authority shall post in each office of executive branch agencies affected by the proposed reduction-in-force plan a copy of the plan five (5) days prior to the submission of the proposed plan to the Administrator and the Director of State Finance. An approved reduction-in-force plan, the description of and reasons for displacement limits and protections from displacement actions, severance benefits that will be offered pursuant to Section 840-2.27D of this title, and the implementation schedule shall be posted in each office affected by the plan within two (2) business days after approval of the plan by the Administrator for executive branch agencies or appointing authorities in the legislative and judicial departments. The plan shall:

1. Provide for the appointing authority to determine the specific position or positions to be abolished within specified units, divisions, facilities, agency-wide or any parts thereof;

2. Provide for retention of affected employees based on classification and type of appointment. If an agency has both classified and unclassified positions in affected job family levels, the appointing authority shall not reduce a higher percentage of occupied classified positions than occupied unclassified positions;

3. Require the separation of probationary classified affected employees in affected job family levels, except those affected employees on probationary status after reinstatement from permanent classified status without a break in service, prior to the separation or displacement of any permanent classified affected employee in an affected job family level;

4. Require the separation of limited term unclassified affected employees and regular unclassified affected employees with less than ~~six (6) months~~ one (1) year of continuous service in affected classes or job family levels prior to the separation or displacement of regular unclassified affected employees with ~~six (6) months or more~~ at least one (1) year of continuous service in an affected class or job family level;

5. Provide for retention of permanent classified affected employees in affected job family levels and those affected employees on probationary status after reinstatement from permanent classified status without a break in service based upon consideration of years of service;

6. Provide for exercise of displacement opportunities by permanent classified affected employees and those affected employees on probationary status after reinstatement from permanent classified status without a break in service if any displacement opportunities exist; and

7. Provide outplacement assistance and employment counseling from the Oklahoma Employment Security Commission and any other outplacement assistance and employment counseling made available by the agency to affected employees regarding the options available

pursuant to the State Government Reduction-in-Force and Severance Benefits Act prior to the date that a reduction-in-force is implemented.

C. The appointing authority may limit displacement of affected employees at the time of a reduction-in-force. Displacement limits shall not be subject to the approval of the Administrator. Any limitation shall be based upon reasonable, written, articulated criteria as certified by the appointing authority. If displacement is limited, the appointing authority shall take action to avoid or minimize any adverse impact on minorities or women. However, if an appointing authority does not limit displacement, the appointing authority shall explain in writing the reasons displacement was not limited.

1. The appointing authority may protect from displacement action up to twenty percent (20%) of projected post-reduction-in-force employees in affected positions within displacement limits; provided, that any fractional number resulting from the final mathematical calculation of the number of those positions shall be rounded to the next higher whole number. The appointing authority must explain why affected employees are being protected, which explanation shall not be subject to the approval of the Administrator.

2. If the affected employee has not held within the last five (5) years a position in the job family level or predecessor class in which the affected employee is otherwise eligible for a displacement opportunity, the appointing authority may determine that the affected employee does not possess the recent relevant experience for the position and deny in writing the displacement opportunity.

3. An affected permanent classified employee may exercise a displacement privilege, if one exists, if the affected employee has received an overall rating of at least “satisfactory”, or its equivalent, on the most recent annual service rating. If an

affected employee has not been rated in accordance with the time limits established in Section 840-4.17 of this title, the employee shall be deemed to have received an overall rating of at least "satisfactory" or its equivalent on the most recent service rating. An affected employee who exercises a displacement privilege pursuant to this section shall:

a. be required, as a condition of continued employment by the agency, to sign an agreement, in a form to be prescribed by the Administrator of the Office of Personnel Management, acknowledging that the employee had an opportunity to receive severance benefits and affirmatively elected to exercise a displacement privilege and to forego such benefits. An affected employee who signs the agreement required by this subparagraph waives any privilege which might otherwise have been available to the affected employee pursuant to the agreement for the provision of severance benefits, and

b. not have the right to exercise any subsequent right to receive severance benefits from the agency for which the affected employee performs services on the date that the employee exercises a displacement privilege. The provisions of this section shall not prohibit any person from exercising a displacement privilege in, or accepting severance benefits from, more than one agency during employment with the State of Oklahoma or from the agency which the affected employee exercised a displacement privilege in any future reduction-in-force.

D. An affected employee who does not agree pursuant to Section 840-2.27E of this title to accept severance benefits and who does not have a displacement opportunity or does not accept a

displacement opportunity shall be separated by the reduction-in-force and shall not receive any severance benefits that would have otherwise been provided pursuant to Section 840-2.27D of this title.

E. Permanent classified affected employees and those affected employees on probationary status after reinstatement from permanent classified status without a break in service removed from a job family level by taking a position in another job family level through displacement or separated after foregoing severance benefits shall be recalled by the agency to the job family level from which removed in inverse order of removal before the agency may appoint other persons to the job family level, from the employment register, by internal action or from Priority Reemployment Consideration Rosters as provided by this section. Upon declination of an offer of reappointment to the job family level from which removed or eighteen (18) months after the date of removal from the job family level, whichever is first, this right to be recalled shall expire.

F. The names of permanent classified affected employees, those affected employees on probationary status after reinstatement from permanent classified status without a break in service and regular unclassified affected employees with ~~six (6) months or more~~ <u>at least one (1) year of</u> continuous service who have been separated pursuant to the State Government Reduction-in-Force and Severance Benefits Act, who apply and meet all requirements for state jobs in the classified service shall be placed on Priority Reemployment Consideration Rosters in accordance with their individual final earned ratings for a maximum of eighteen (18) months after the date of separation. Before any vacant position is filled by any individual eligible for initial appointment from the employment register, individuals on the Priority Reemployment Consideration Rosters shall be given priority consideration for reemployment by any state agency within eighteen (18) months after the date of the reduction-in-force. Upon declination of an offer of reemployment to

a job family level having the same or higher pay band than the job family level from which removed, or eighteen (18) months after the date of separation, whichever is first, this priority consideration for reemployment shall expire. If an agency, including but not limited to the University Hospitals Authority, has posted a reduction-in-force plan and implementation schedule, all affected employees in positions covered by the plan and any within the displacement limits established by the appointing authority of the agency who have been separated shall be eligible for priority reemployment consideration.

G. If an agency or any part thereof is scheduled to be closed or abolished as a result of legislation or a court order, the affected employees, who would be eligible for Priority Reemployment Consideration after their separation in accordance with subsection F of this section, may apply and, if qualified and eligible, shall be accorded Priority Reemployment Consideration not to exceed twelve (12) months before the scheduled date of separation. If an agency, including but not limited to the University Hospitals Authority, has posted a reduction-in-force plan and implementation schedule, all affected employees in positions covered by the plan and any within the displacement limits established by the appointing authority of the agency shall be eligible for Priority Reemployment Consideration beginning with the date the schedule is posted, not to exceed twelve (12) months before the scheduled date of separation.

H. When the Legislature is not in session, the Contingency Review Board may, upon the request of the Governor, direct agencies, boards and commissions to reduce the number of employees working for said agency, board or commission whenever it is deemed necessary and proper. Such reduction shall be made pursuant to reduction-in-force plans as provided in this section.

I. 1. When the Legislature is not in session, the Contingency Review Board may, upon the request of the Governor, direct and

require mandatory furloughs for all state employees whenever it is deemed necessary and proper. The Contingency Review Board shall specify the effective dates for furloughs and shall note any exceptions to state employees affected by same. All classified, unclassified, exempt or nonmerit employees, including those employees of agencies or offices established by statute or the Constitution, shall be affected by such actions.

2. Mandatory furlough means the involuntary temporary reduction of work hours or the placement of an employee on involuntary leave without pay. Rules governing leave regulations, longevity pay and participation in the State Employees Group Health, Dental, Disability, and Life Insurance program shall not be affected by mandatory furloughs. Furlough, as provided for in this section or by rules adopted by the Administrator of the Office of Personnel Management, shall not be appealable under the provisions of the Oklahoma Personnel Act.

3. Notwithstanding existing laws or provisions to the contrary, members of state boards and commissions shall not receive per diem expenses during periods of mandatory furlough. The Contingency Review Board shall additionally call upon elected officials, members of the judiciary, and other public officers whose salary or emoluments cannot be altered during current terms of office, to voluntarily donate to the General Revenue Fund any portion of their salary which would otherwise have been affected by a mandatory furlough.

J. All agencies directed by the Contingency Review Board to terminate or furlough employees, shall report the cumulative cost savings achieved by the reductions-in-force or furloughs to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives on a quarterly basis for one (1) year following the effective date of the action.

K. The appointing authority of an agency which has an approved reduction-in-force plan pursuant to the State Government Reduction-in-Force and Severance Benefits Act may request the Administrator of the Office of Personnel Management to appoint an interagency advisory task force for the purpose of assisting the agency and its employees with the implementation of the reduction-in-force. The appointing authority of state agencies requested by the Administrator to participate on a task force shall assign appropriate administrative personnel necessary to facilitate the necessary assistance required for the efficient implementation of the approved reduction-in-force.

L. Except as otherwise provided, the University Hospitals Authority shall not be subject to the provisions of this section. Beginning August 25, 1995, the provisions of subsection E of this section regarding priority reemployment consideration shall apply to any employee of the University Hospitals Authority who was employed on or became employed after February 1, 1995, and who is separated from state service as a result of a reduction-in-force. The University Hospitals Authority shall conduct a reduction-in-force to terminate employees, regardless of status, whose positions are eliminated because of a contract with a private nongovernmental entity for the lease and operations of the University Hospitals pursuant to the University Hospitals Authority Act.

SECTION 8. AMENDATORY Section 7, Chapter 287, O.S.L. 1997, as amended by Section 3, Chapter 256, O.S.L. 1998 (74 O.S. Supp. 2000, Section 840-2.27D), is amended to read as follows:

Section 840-2.27D A. Agencies shall provide severance benefits to the following categories of affected employees who are separated from the state service as a result of a reduction-in-force: permanent classified affected employees, affected employees on probationary status after reinstatement from permanent classified status without a break in service, and regular unclassified affected

employees with at least one (1) year of continuous state service; provided, however, affected employees of the University Hospitals Authority must have been continuously employed in the state service since on or before January 1, 1995, to receive severance benefits. Affected employees who qualify for severance benefits pursuant to this section, in addition to the payment of any compensable accrued leave or other benefits an affected employee is eligible to receive upon separation from the state service, shall receive severance benefits consisting of the following elements:

1. All agency severance benefits shall provide the following:

   a. payment equal to the affected employee's current health insurance premium for the affected employee only for eighteen (18) months based on the cost of the premium at the time of the reduction-in-force. The appointing authority of the agency can ask the Director of the Office of State Finance to waive the severance benefit provision in this subparagraph or to reduce the length of coverage or subsequent severance benefit payment upon demonstration of the agency's inability to fund the full benefit,

   b. a longevity payment, as prescribed by Section 840-2.18 of this title, in the amount which would otherwise be paid to the affected employee on the affected employee's next anniversary date. For the purposes of this subparagraph, the University Hospitals Authority shall calculate longevity for affected employees who were members of the University Hospitals Authority Model Personnel System pursuant to Section 3211 of Title 63 of the Oklahoma Statutes for all state service as would otherwise be determined by Section 840-2.18 of this title, and

c. outplacement assistance and employment counseling prior to and after the reduction-in-force from the Oklahoma Employment Security Commission and other state or private entities that the entity may contract with to assist individuals who may be impacted by a reduction-in-force;

2. In addition to the severance benefits provided by paragraph 1 of this subsection, agencies may give affected employees, except as otherwise provided by paragraph 3 of this subsection, severance benefit packages based on any combination of the following options, provided that all affected employees who receive severance benefits in the reduction-in-force shall be accorded uniform treatment pursuant to the State Government Reduction-in-Force and Severance Benefits Act:

a. up to one (1) week of pay, calculated by dividing the affected employee's current annual salary by the whole number fifty-two (52), for each year of service,

b. a maximum lump-sum payment of Five Thousand Dollars ($5,000.00), and

c. payment for accumulated sick leave or extended illness benefits at up to one-half of the affected employee's hourly rate not otherwise used pursuant to law for conversion to credited retirement credit; and

3. An affected employee may direct payment of all or a portion of the affected employee's severance benefits to the options authorized by this paragraph by exercising an option to receive education vouchers for use in connection with the Reduction-in-Force Education Voucher Action Fund subject to the following requirements and rules of the Administrator of the Office of Personnel Management, provided that the agency offers to match employee severance funds pursuant to this paragraph. In such case:

a. the affected employee may purchase One Dollar ($1.00) in voucher credit for each One Dollar ($1.00) contributed by the affected employee to the fund subject to a maximum affected employee contribution of Three Thousand Dollars ($3,000.00) which may be matched by a maximum agency contribution of Three Thousand Dollars ($3,000.00); provided, that the agency contribution shall not exceed the contribution of the affected employee,

b. the affected employee may pay the cost for the voucher program directly, subject to the requirements of subparagraph a of this paragraph, or the employing agency of the affected employee may pay the cost of the voucher from funds which would otherwise have been used to make payments to the displaced affected employee pursuant to an election by the affected employee to receive severance benefits,

c. no voucher issued pursuant to the provisions of this paragraph shall:

(1) be redeemed by the affected employee for cash or anything of value other than the cost of tuition and fees at a public or private educational institution within the State of Oklahoma, or

(2) be valid longer than a period of four (4) years from the date upon which the voucher is issued to the affected employee,

d. the Administrator of the Office of Personnel Management shall pay tuition and fees directly to the educational institution and shall receive any refunds for payment of tuition and fees from the educational institution which shall be credited to the affected employee's account, and

e. the Administrator of the Office of Personnel Management shall distribute to the affected employee and the agency any monies remaining in the affected employee's account after the voucher credit has expired. The distribution shall be based on the proportional share of contributions made by the affected employee and the agency.

B. Each affected employee who is separated from state service as a result of a reduction-in-force after July 1, 1998, besides being eligible for the eighteen (18) months of continuation coverages provided by the Public Health Service Act, 42 U.S.C., Section 30066-1 et seq., i.e., health, dental, vision and healthcare reimbursement account options, under this severance benefit, shall also be eligible to elect additional continuation coverage for any life insurance, in twenty-thousand-dollar units, on self or five-thousand-dollar units, on dependents, and to continue participation in the dependent care reimbursement account provided that these additional coverages were in effect immediately prior to the effective date of the reduction-in-force, the date of which shall serve as the qualifying event date. Provided, that no coverage elected for continuation through the Public Health Service Act for the full eighteen-month period is allowed to lapse, then that affected employee may elect to continue those same coverages for an additional eighteen (18) months at whatever rate is then in effect. This additional eighteen-month continuation period of coverage shall be administered by the Oklahoma State Employees Benefits Council following the initial eighteen-month period of continuation which shall be administered by the COBRA office at the State and Education Employees Group Insurance Board.

C. Part-time affected employees shall receive benefits pursuant to this section on a prorated basis. Part-time employees shall have been compensated for at least one thousand (1,000) hours during the

twelve (12) months immediately preceding the effective date of the reduction-in-force to be eligible for severance benefits pursuant to the State Government Reduction-in-Force and Severance Benefits Act.

D. No appointing authority shall grant affected employees in a reduction-in-force severance benefits except as provided in this section.

SECTION 9. AMENDATORY Section 12, Chapter 287, O.S.L. 1997, as amended by Section 5, Chapter 256, O.S.L. 1998 (74 O.S. Supp. 2000, Section 840-2.28), is amended to read as follows:

Section 840-2.28 A. Agencies shall be authorized to provide voluntary out benefits to permanent classified employees and regular unclassified employees with ~~six (6) months~~ <u>at least one (1) year</u> of continuous state service who are voluntarily separated from the state service in order to reduce or eliminate the adverse impact of an imminent reduction-in-force. For purposes of this section, "agency" or "agencies" shall include agencies, boards, commissions, or departments of all three branches of state government. Voluntary out benefit payments made pursuant to this section, in addition to the payment of any compensable accrued leave and other benefits an employee who voluntarily separates is eligible to receive upon separation from the state service, shall consist of the following elements:

1. All agency voluntary out benefits shall provide the following:

a. payment equal to the employee's current health insurance premium for the employee only for eighteen (18) months based on the cost of the premium at the time of the voluntary separation, and

b. a longevity payment, as prescribed by Section 840-2.18 of this title in the amount which would otherwise be paid to the employee on the employee's next anniversary date. For the purposes of this

subparagraph, the University Hospitals Authority shall calculate longevity for employees who were members of the University Hospitals Authority Model Personnel System pursuant to Section 3211 of Title 63 of the Oklahoma Statutes for all state service as would otherwise be determined by Section 840-2.18 of this title;

2. In addition to the voluntary out benefits provided by paragraph 1 of this subsection, agencies may give employees, except as otherwise provided by paragraph 3 of this subsection, voluntary out benefit packages based on any combination of the following options, provided that all employees who are separated as a result of the agency offer of a voluntary out benefit pursuant to this section in anticipation of the imminent reduction-in-force are accorded uniform treatment pursuant to this section:

a. up to one (1) week of pay, calculated by dividing the employee's current annual salary by the whole number fifty-two (52), for each year of service,

b. a maximum lump-sum payment of Five Thousand Dollars ($5,000.00),

c. payment for accumulated sick leave or extended illness benefits at up to one-half of the employee's hourly rate not otherwise used pursuant to law for conversion to credited retirement credit, and

d. payment of health benefit premiums as provided by the Public Health Service Act, 42 U.S.C., Section 300bb-1 et seq., for a period not to exceed eighteen (18) months. The agency shall not be authorized to make a cash payment to the employee in lieu of the payment by the agency of the cost of continued health care coverage for the employee; and

3. An employee may direct payment of all or a portion of the employee's voluntary out benefits to the options authorized by this paragraph by exercising an option to receive education vouchers for use in connection with the Reduction-in-Force Education Voucher Action Fund subject to the following requirements and rules of the Administrator of the Office of Personnel Management, provided that the agency offers to match employee voluntary out funds pursuant to this paragraph. In such case:

a. the employee may purchase One Dollar ($1.00) in voucher credit for each One Dollar ($1.00) contributed by the employee to the fund subject to a maximum employee contribution of Three Thousand Dollars ($3,000.00) which may be matched by a maximum agency contribution of Three Thousand Dollars ($3,000.00); provided, that the agency contribution shall not exceed the contribution of the employee,

b. the employee may pay the cost for the voucher program directly, subject to the requirements of subparagraph a of this paragraph, or the employing agency of the employee may pay the cost of the voucher from funds which would otherwise have been used to make payments to the displaced employee pursuant to an election by the employee to receive voluntary out benefits,

c. no voucher issued pursuant to the provisions of this paragraph shall:

(1) be redeemed by the employee for cash or anything of value other than the cost of tuition and fees at a public or private educational institution within the State of Oklahoma, or

(2) be valid longer than a period of four (4) years from the date upon which the voucher is issued to the employee,

d. the Administrator of the Office of Personnel Management shall pay tuition and fees directly to the educational institution and shall receive any refunds for payment of tuition and fees from the educational institution which shall be credited to the employee's account, and

e. the Administrator of the Office of Personnel Management shall distribute to the affected employee and the agency any monies remaining in the employee's account after the voucher credit has expired. The distribution shall be based on the proportional share of contributions made by the employee and the agency.

B. Appointing authorities in agencies of the executive branch shall submit to the Director of the Office of State Finance, prior to offering voluntary out benefits pursuant to this section, a plan with details on why the agency has determined a reduction-in-force is imminent, the anticipated impact of the imminent reduction-in-force on the agency or part of the agency, the voluntary out benefits the agency intends to offer pursuant to this section and their cost, and how the agency intends to execute the offer of the voluntary out benefits. The Director shall review the fiscal components of the plan and have ten (10) business days to disapprove it.

C. Part-time employees who are eligible to receive voluntary out benefits shall receive benefits pursuant to this section on a prorated basis. Part-time employees shall have been compensated for at least one thousand (1,000) hours during the twelve (12) months immediately preceding the separation of the employee due to the employee's acceptance of a voluntary out benefit.

D. An employee who accepts voluntary out benefits pursuant to this section shall not be eligible to accept any future voluntary out benefits pursuant to this section.

SECTION 10. AMENDATORY Section 1, Chapter 387, O.S.L. 1992, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 7, Chapter 410, O.S.L. 1999 (74 O.S. Supp. 2000, 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~~ C of this section.

B. Employees appointed to supervisory positions after January 1, 1993, shall complete twenty-four (24) hours of training pursuant to subsection ~~D~~ C of this section within twelve (12) months of assuming such supervisory position. Thereafter, supervisors are required to complete twelve (12) hours of training pursuant to subsection ~~D~~ C 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 evaluating the performance of subordinates.~~

~~D.~~ 1. The Administrator of the Office of Personnel Management shall promulgate any rules necessary to develop and implement training programs for supervisory personnel which shall include courses related to the effective performance of an agency manager or supervisor. Rules authorized by this subsection shall require supervisors to attend such training within a reasonable period of time determined by the Administrator.

2. Training programs for supervisors under this section 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 11. AMENDATORY 74 O.S. 1991, Section 840.19, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 7, Chapter 336, O.S.L. 2000 (74 O.S. Supp. 2000, 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 job family or job family level 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. Notwithstanding any other provision of law, the Administrator may keep confidential all promotional examinations, entrance examinations and any and all testing materials, but shall be required to disclose them pursuant to a valid order from a court of competent jurisdiction and establishment of a protective order prohibiting public disclosure of said examinations and materials.

B. No person shall be required to take an entrance examination for an appointment to a job family level requiring licensing by a state agency if that person has been previously tested and is currently licensed by the State of Oklahoma.

C. Promotional examinations for promotion within an agency, unless requested by the agency, shall not be required; provided that the promotion is in accordance with a plan adopted by the Administrator and is in accordance with a plan adopted by the promoting agency. Every employee promoted within an agency shall serve a six-month trial period in the job level to which the employee is promoted, unless the trial period is waived, in writing, by the appointing authority. At any time during a trial period, the appointing authority may return the employee to the level from which the employee was promoted upon written notification by the appointing authority to the employee as to such action and the reason therefor, and the employee shall not have the right to appeal.

D. 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.

E. The Office of Personnel Management shall certify that a candidate meets the necessary job qualifications for a job family level in the classified service for the purpose of allowing that candidate to be appointed to a job. 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.

F. Subsections A through E 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 E of this section.

G. Subsections A through E 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 E 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 pursuant to Section 840-4.13 of this title.

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.

H. 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 family level, 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 pursuant to Section 840-4.13 of this title.

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 12. AMENDATORY 74 O.S. 1991, Section 841.16, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last

amended by Section 18, Chapter 410, O.S.L. 1999 (74 O.S. Supp. 2000, Section 840-4.17), is amended to read as follows:

Section 840-4.17 A. The Office of Personnel Management shall make available one standard performance management system to be used by all agencies for completing employee service ratings. Agencies shall implement this new system on or before January 1, 2000. Until January 1, 2000, agencies may continue to use employee service rating systems which were approved or provided by the Administrator prior to November 1, 1999. The purpose of this employee performance management system 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 subsection A of Section 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.

B. The employee performance management 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 the employee's individual service rating may file a grievance pursuant to Section 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 the individual service rating of the employee 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 available service ratings of current or former state employees in decisions regarding promotions, appointments, 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.~~

G. Each Appointing Authority shall confirm in writing to the Administrator of the Office of Personnel Management on or before January 1 of each year the agency's compliance with this section.

SECTION 13. AMENDATORY 74 O.S. 1991, Section 4117, is amended to read as follows:

Section 4117. Pursuant to rules and regulations promulgated by the Committee, any state employee occupying a supervisory position in an agency, department, commission, or office eligible to participate in the incentive awards program provided for in Section 4115 of this title, monthly, may nominate employees for individual incentive compensation. Nominations for such compensation shall be made in the same manner as provided for in Section 4116 of this title concerning nominations for individual incentive awards. Those

nominated for such compensation, at a minimum must have made an exceptional contribution similar to, but greater than, that required by the provisions of subsection A of Section 4116 of this title. Employees determined by the Committee to be deserving of individual incentive compensation pursuant to the provisions of this section may be awarded an increase in compensation in a sum at least equal to twenty-five percent (25%) of the amount determined by the Committee to be the total unit dollar savings to the state for the level of services rendered, but not to exceed the sum of ~~Five Thousand Dollars ($5,000.00)~~ Ten Thousand Dollars ($10,000.00). Said incentive compensation shall be paid in one lump sum from any funds available to the nominating agency, department, commission, or office for the eligible fiscal year. No nominations for an individual incentivecompensation award shall be made until the nominating agency, department, commission, or office assures that funds for said award are available. Funds for the payment of individual incentive compensation awards shall be considered encumbered to the extent said awards are approved by the committee.

SECTION 14. This act shall become effective July 1, 2001.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency 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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