

CS for SB 661

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE STATE SENATE
Wednesday, March 2, 2005

Committee Substitute for
Senate Bill No. 661

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 661 - By: NICHOLS and GUMM
of the Senate and BALKMAN of the House.

[Oklahoma Personnel Act - appeal of employee service
ratings - effective date]

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-1.9, is
amended to read as follows:

Section 840-1.9 In addition to any other duties expressly set
forth by law, the Oklahoma Merit Protection Commission shall:

- 1. Receive and act on complaints, counsel persons and groups on
their rights and duties and take action designed to obtain voluntary
compliance with the provisions of the Oklahoma Personnel Act;
- 2. Investigate allegations of violations of the provisions of
the Oklahoma Personnel Act within ~~their~~ its jurisdiction;
- 3. Investigate allegations of abuses in the employment
practices of the Administrator of the Office of Personnel Management
or of any state agency;
- 4. Investigate allegations of violations of the rules of the
Merit System of Personnel Administration and prohibited activities
in the classified service;

1 5. Establish and maintain a statewide Alternative Dispute
2 Resolution Program to provide dispute resolution services for state
3 agencies and employees;

4 6. Establish rules and regulations, pursuant to the
5 Administrative Procedures Act as may be necessary to perform the
6 duties and functions of the Commission;

7 7. Establish guidelines for the qualifications, duties,
8 responsibilities, authority, power, and continued employment of the
9 Executive Director, Administrative Hearing Officers, mediators, and
10 other resolution arbitrators or facilitators;

11 8. Prepare and preserve an audio tape of all proceedings of all
12 hearings conducted by the Commission and furnish transcripts of such
13 tapes upon payment of the costs of such transcripts by the party
14 requesting the transcripts;

15 9. Submit quarterly, fiscal year reports on workload statistics
16 to the Governor, the Speaker of the House of Representatives, and
17 the President Pro Tempore of the Senate containing the following
18 information:

19 a. the number of cases, complaints, and requests for
20 hearing filed, disposed of and pending with the
21 Commission for each month of the quarter,

22 b. a numerical breakdown of the methods of disposition of
23 such cases, complaints, and requests for hearing,

- 1 c. a numerical breakdown of mediations, prehearing
2 conferences, and appellate hearings, conducted, and
3 d. the date of the oldest pending case, complaint, and
4 request for hearing.

5 ~~The report for the first quarter of fiscal year 1989 shall be~~
6 ~~submitted on or before October 31, 1988.~~ Quarterly reports
7 ~~thereafter~~ shall be submitted within thirty (30) days following the
8 last day of the month of the appropriate quarter; ~~and~~

9 10. Make all records of the Commission, except those made
10 confidential by law, available for public inspection, copying and
11 mechanical reproduction, or either of them, in accordance with the
12 Oklahoma Open Records Act and charge a fee not to exceed twenty-five
13 cents (\$0.25) per page as the direct costs of document copying or
14 mechanical reproduction. All fees collected pursuant to the
15 provisions of this paragraph shall be deposited in the Oklahoma
16 Merit Protection Commission Revolving Fund; and

17 11. Have jurisdiction to investigate or hear appeals of
18 individual service ratings pursuant to the provisions of Section
19 840-4.17 of this title.

20 SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-4.17, as
21 last amended by Section 12, Chapter 312, O.S.L. 2004 (74 O.S. Supp.
22 2004, Section 840-4.17), is amended to read as follows:

1 Section 840-4.17 A. The Office of Personnel Management shall
2 make available one standard performance management system that shall
3 be used by all agencies for completing employee service ratings.
4 The purpose of this employee performance management system is to
5 evaluate the performance of each regular classified, unclassified
6 and exempt employee in the executive branch of state government
7 except those in the exempt unclassified service as specified in
8 paragraphs 1 and 2 of subsection A of Section 840-5.5 of this title
9 and those employees employed by the institutions under the
10 administrative authority of The Oklahoma State System of Higher
11 Education.

12 B. The employee performance management system shall provide for
13 the following:

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

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

19 3. The identification by the immediate supervisor of
20 accountabilities upon which the employee will be evaluated;

21 4. A mid-term interview with the immediate supervisor for the
22 purpose of discussing the progress of the employee in meeting the
23 accountabilities upon which the employee will be evaluated;

1 5. Corrective actions, if necessary, to correct deficiencies;
2 ~~4. An~~ 6. A final interview with the employee by the immediate
3 supervisor who shall provide the employee with a copy of the service
4 ratings; and
5 ~~5. 7.~~ The opportunity for the employee to submit written
6 comments regarding the service rating; and
7 8. The opportunity for the employee to appeal the evaluation to
8 the Oklahoma Merit Protection Commission.

9 C. Each employee shall be rated at least thirty (30) days prior
10 to the end of the probationary period. ~~Thereafter~~ After the end of
11 the probationary period, each employee shall be rated ~~no less than~~
12 ~~once each year~~ annually on a twelve-month period, except as shall be
13 provided by rules promulgated by the Administrator of the Office of
14 Personnel Management.

15 D. Any permanent classified employee who disagrees with the
16 employee's individual service rating may file a grievance pursuant
17 to Section 840-6.2 of this title or may appeal to the Commission.
18 Any employee, regardless of status, who is required to be rated
19 pursuant to this section and who disagrees with the individual
20 service rating of the employee may file a complaint through any
21 other dispute resolution process made available through the
22 employing agency or the ~~Oklahoma Merit Protection~~ Commission. The

1 ~~Oklahoma Merit Protection Commission shall not have jurisdiction to~~
2 ~~investigate or hear appeals of individual service ratings.~~

3 E. The agency shall use available service ratings of current or
4 former state employees in decisions regarding promotions,
5 appointments, demotions, performance pay increases and discharges.
6 Reductions-in-force shall not be considered discharges.

7 F. The agency shall retain a copy of the service rating for
8 each employee of the agency. A copy of the service rating shall be
9 retained in the employee's personnel file.

10 G. Each appointing authority shall annually report ~~their~~ its
11 compliance with the provisions of this section in writing to the
12 Administrator of the Office of Personnel Management. The
13 Administrator shall prescribe a form for such reporting.

14 H. The Administrator of the Office of Personnel Management
15 shall conduct an annual random audit of state agencies in compliance
16 with this section.

17 SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-6.8, is
18 amended to read as follows:

19 Section 840-6.8 A. The presiding officer of any hearing or
20 Alternative Dispute Resolution Program proceeding before the
21 Oklahoma Merit Protection Commission may require payment of
22 reasonable attorney fees and costs to the prevailing party if the

1 position of the nonprevailing party was without reasonable basis or
2 was frivolous.

3 ~~B. Requests by prevailing parties for payment of attorney fees~~
4 ~~and costs shall be filed by motion with a copy served on other~~
5 ~~parties within ten (10) days of the date that the decision is~~
6 ~~issued. A responsive pleading may be filed within ten (10) days of~~
7 ~~the date the motion is filed with the Oklahoma Merit Protection~~
8 ~~Commission. The motion shall be filed at the office of the Oklahoma~~
9 ~~Merit Protection Commission to the attention of the presiding~~
10 ~~officer and the ruling on the motion shall be made in an addendum~~
11 ~~decision.~~

12 ~~C. The motion for fees and costs shall state why the prevailing~~
13 ~~party believes he or she is entitled to an award under this statute~~
14 ~~and shall be supported by evidence substantiating the amount of the~~
15 ~~request. Such evidence shall include the following:~~

16 ~~1. Accurate and current time records;~~

17 ~~2. A copy of the terms of any fee agreement between the party~~
18 ~~and the attorney;~~

19 ~~3. The attorney's customary billing rate for similar work,~~
20 ~~provided the attorney has a billing practice to report; and~~

21 ~~4. Evidence of the prevailing community rate sufficient to~~
22 ~~establish a market value for the services rendered.~~

1 ~~D.~~ If the ~~Oklahoma Merit Protection~~ Commission determines that
2 the appeal is frivolous, any party may be assessed attorney fees and
3 costs of the action.

4 ~~E.~~ C. A petition for judicial review by the ~~Oklahoma Merit~~
5 ~~Protection~~ Commission of the addendum decision shall be filed in
6 accordance with Article II of the Administrative Procedures Act,
7 within ten (10) days of the issue date of said decision.

8 SECTION 4. This act shall become effective November 1, 2005.

9 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-23-05 - DO
10 PASS, As Amended and Coauthored.