

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 343

By: Anderson

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6 AS INTRODUCED

7 An Act relating to state government; amending 74 O.S.
8 2001, Section 840-4.12, as amended by Section 15,
9 Chapter 347, O.S.L. 2002 (74 O.S. Supp. 2008, Section
10 840-4.12), which relates to promotional and entrance
11 examinations; authorizing the Office of Personnel
12 Management to permit a merit system agency to special
13 direct hire certain persons in specific circumstances;
14 and declaring an emergency.

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

16 SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-4.12, as
17 amended by Section 15, Chapter 347, O.S.L. 2002 (74 O.S. Supp. 2008,
18 Section 840-4.12), is amended to read as follows:

19 Section 840-4.12 A. The Administrator of the Office of
20 Personnel Management shall be responsible for conducting promotional
21 examinations and entrance examinations as required under the Oklahoma
22 Personnel Act. Such examinations shall be of such character as to
23 determine the qualifications, fitness and ability of the persons
24 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

1 satisfactorily completed vocational and technical education courses
2 in vocational training units or divisions approved by the State
3 Department of Rehabilitation Services shall be limited in scope so as
4 to relate to the skill and physical capability required for a
5 particular position. Adequate public notice shall be given of all
6 examinations except for promotion within a department or agency.
7 Notwithstanding any other provision of law, the Administrator may
8 keep confidential all promotional examinations, entrance examinations,
9 and any other testing materials, but the Administrator shall be
10 required to disclose them pursuant to a valid order from a court of
11 competent jurisdiction and establishment of a protective order
12 prohibiting public disclosure of the examinations and materials.

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

17 C. Promotional examinations for promotion within an agency,
18 unless requested by the agency, shall not be required; provided that
19 the promotion is in accordance with a plan adopted by the
20 Administrator and is in accordance with a plan adopted by the
21 promoting agency. Every employee promoted within an agency or
22 following an intra-agency lateral transfer shall serve a six-month
23 trial period in the job level to which the employee is promoted or
24 transferred, unless the trial period is waived, in writing, by the

1 appointing authority. At any time during a trial period, the
2 appointing authority may return the employee to the level from which
3 the employee was promoted upon written notification by the appointing
4 authority to the employee as to such action and the reason therefor,
5 and the employee shall not have the right to appeal.

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

10 E. The Office of Personnel Management shall certify that a
11 candidate meets the necessary job qualifications for a job family
12 level in the classified service for the purpose of allowing that
13 candidate to be appointed to a job. The Administrator of the Office
14 of Personnel Management may delegate the certification function
15 provided by this section to an agency pursuant to subsection E of
16 Section 840-1.15 of this title. Any statute which creates any
17 position or qualifications for any position in the classified service
18 shall not be construed to limit the power of the Administrator to
19 interpret or add to those qualifications in a reasonable manner
20 consistent with the intent of the Legislature and the duties of that
21 position. Any statute which empowers any agency head or other
22 employer to hire or nominate persons for employment within the
23 classified service shall not be construed to empower that agency head
24 or other employer to waive or modify any qualification or rule for

1 employment established by the Administrator. The Administrator shall
2 not be construed to have the authority to limit or reduce any
3 qualification established by statute for any position. The
4 constructions established herein shall apply to any statutes or
5 positions heretofore or hereafter created unless that statute clearly
6 and specifically states that such constructions do not apply.

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

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

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

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

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

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

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

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

22 2. Agencies of this state may use the optional hiring procedure
23 provided in this subsection to employ females, blacks, Hispanics,
24 Asian/Pacific Islanders and American Indians/Alaskan natives, as

1 defined by the Equal Employment Opportunity Commission, who are legal
2 residents of the state in competitive and noncompetitive jobs.
3 Individuals must meet the minimum qualifications and pass any
4 required examinations established by the Office of Personnel
5 Management or by statute. Except for any required examinations and
6 minimum qualifications specified in applicable job specifications,
7 such persons shall be exempt from the hiring procedures administered
8 by the Office of Personnel Management. Persons may only be employed
9 under this subsection in a job family level, group or category which
10 has been identified as underutilized and in which an appropriate
11 hiring goal has been set in the state agency's affirmative action
12 plan approved by the Office of Personnel Management pursuant to the
13 provisions of Section 840-2.1 of this title. In addition, the
14 appointing authority of the employing agency must determine that a
15 manifest imbalance exists which justifies remedial action pursuant to
16 this subsection in order to reach the affirmative action hiring goal.
17 Provided further, that eligible war veterans, as defined by Section
18 67.13a of Title 72 of the Oklahoma Statutes, who are members of the
19 group for which a hiring goal has been set shall be considered by the
20 employing agency before a nonveteran is appointed pursuant to this
21 subsection.

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

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

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

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

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

18 I. When a merit system agency assumes an essential state
19 function previously performed by a non-merit state agency, local
20 government, or private contractor for such merit system agency, the
21 Office of Personnel Management may permit the merit system agency to
22 special direct hire as classified employees from the non-merit state
23 agency, local government, or private contractor those individuals who
24 are performing job functions which reasonably will be continued by

1 the merit system agency in the public interest of orderly transition.
2 Qualification may be established by evidence that the employee has
3 performed the same job satisfactorily for at least one (1) year.
4 Individuals approved for special direct hire under this subsection
5 shall be exempt from entrance examinations and hiring procedures
6 administered by the Office of Personnel Management pursuant to this
7 section and Section 840-4.13 of this title. Any individual hired
8 under this subsection shall serve a full probationary period of one
9 (1) year. The hiring agency shall submit a plan for implementing the
10 special direct hire process to the Office of Personnel Management.
11 The Office of Personnel Management shall review the special direct
12 hire plan submitted by the agency prior to implementation to ensure
13 compliance with state law. The Office of Personnel Management shall
14 complete the review within ten (10) business days of receipt of the
15 plan. The hiring agency shall not exceed existing limits on
16 authorized full time employment.

17 SECTION 2. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

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