STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3293 By: Osborn

COMMITTEE SUBSTITUTE

[state employee compensation - sick leave rates - Oklahoma Personnel Act - pay bands - effective date - emergency]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840-2.15A of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established the "State Employee Compensation Program" within the Executive Branch. The State Employee Compensation Program will attract, retain and reward quality employees with competitive total compensation based on relevant labor markets. The Office of Management and Enterprise Services will be responsible for implementing the compensation program. The compensation program will establish pay structures with a goal of working toward a ninety percent (90%) of the market compensation philosophy. The compensation program will reinforce a productive work climate and culture of accountability and make the State of Oklahoma an employer of choice. Pay structures will be implemented with fairness and equity throughout the Executive Branch. Pay delivery mechanisms will be based on a combination of establishing and maintaining relativity to market, achievement of performance objectives, recognition of differences in job content, acquisition and application of further skill and education. The Legislature will be accountable for the funding of the pay structures established pursuant to the compensation program.

B. Subject to the availability of funds, an annual appropriation equal to three percent (3%) of the previous fiscal year's total payroll cost for state employees within the executive branch shall be made to the Human Capital Management Revolving Fund for the purpose of state employee compensation adjustments. The Office of Management and Enterprise Services shall make allocations from the Human Capital Management Revolving Fund to executive branch state agencies for employee salary market adjustments, targeted performance adjustments and equity adjustments pursuant to the recommendations of the 2013 State Employee Total Remuneration Study.

SECTION 2. AMENDATORY 74 O.S. 2011, Section 840-2.17, as amended by Section 876, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2013, 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 that is inconsistent with the pay structures established by the Office of Management and Enterprise Services for all state officers and employees in the executive branch pursuant to Section 840-4.6 of this title, including, but not limited to, 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~~ Career Service Rules for Employment promulgated by the Director. This prohibition applies to all ~~classified and unclassified~~ career and executive service officers and employees in the executive branch of state government, excluding institutions under the administrative authority of the Oklahoma State Regents for Higher Education.

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 a higher salary band;

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

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 transfers, 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. Such adjustments, which are implemented before November 1, 2006, other than lump-sum payments, shall become permanent after twenty-four (24) months from the date such salary adjustment is implemented and may not later be removed from an employee's base salary if a furlough or reduction-in-force

is implemented by the appointing authority granting such salary adjustment. Skill-based pay adjustments, which are implemented on or after November 1, 2006, and which are paid to an employee, shall be paid as long as the employee remains employed in the position and performs the skills for which the differential is due, but shall not be included as a part of the employee's base salary;

9. Equity-based adjustments;

10. Performance-based adjustments for employees who received at least a "meets standards" rating on their most current performance rating;

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

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 intra-agency lateral transfer or 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 in subsection B of this section shall be implemented pursuant to rules promulgated by the Director of the Office of Management and Enterprise Services for the ~~classified~~ career service.

E. Appointing authorities may implement the pay movement mechanisms in paragraphs 6 through 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, 10 and 11 of subsection B of this section within the agency during the next appropriations cycle.

F. The provisions in subsection B of this section shall not apply to chief executive officers of any agency, board, commission, department or program except for paragraphs 3 and 5 of subsection B of this section.

SECTION 3. AMENDATORY 74 O.S. 2011, Section 840-2.20, as amended by Section 879, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2013, Section 840-2.20), is amended to read as follows:

Section 840-2.20 A. The Director of the Office of Management and Enterprise Services shall promulgate such emergency and permanent rules regarding leave and holiday leave as are necessary to assist the state and its agencies.

The Director of the Office of Management and Enterprise Services, in adopting new rules, amending rules and repealing rules, shall ensure that the following provisions are incorporated:

1. Eligible employees who enter on duty or who are reinstated after a break in service shall receive leave benefits in accordance with the schedule outlined below. Leave shall be accrued based upon hours worked, paid leave, and holidays, but excluding overtime, not to exceed the total possible work hours for the pay period. Years of service shall be based on cumulative periods of employment calculated in the manner that cumulative service is determined for longevity purposes pursuant to Section 840-2.18 of this title. Employees may accumulate more than the maximum annual leave accumulation limits shown in the schedule below, provided that such excess is used during the same calendar year in which it accrues or within twelve (12) months of the date on which it accrues, at the discretion of the appointing authority. If an employee whose job duties include providing fire protection services, law enforcement services or services with the Department of Corrections is unable to use excess leave as provided for in this paragraph because the employee's request for leave is denied by the employee's appointing authority and the denial of leave is due to extraordinary circumstances such that taking leave could pose a threat to public safety, health or welfare, the employee shall receive compensation at the employee's regular rate of pay for the amount of excess leave

the employee is unable to use. Such compensation shall be paid at the end of the time period during which the excess leave was required to have been used;

2. From ~~November 1, 2001~~ January 1, 2015, the following accrual rates and accumulation limits apply to eligible employees as follows:

	ACCRUAL RATES			ACCUMULATION LIMITS
	Cumulative Years of Service	Annual Leave	Sick Leave	Annual Leave
Persons employed	0-5 yrs =	15 day/yr	~~15~~ 10 days/yr	30 days
	5-10 yrs =	18 day/yr	~~15~~ 10 days/yr	60 days
	10-20 yrs =	20 day/yr	~~15~~ 10 days/yr	60 days
	over 20 yrs =	25 day/yr	~~15~~ 10 days/yr	60 days

3. Temporary employees and other limited term employees are ineligible to accrue, use, or be paid for sick leave and annual leave. Such employees shall be eligible for paid holiday leave at the discretion of the appointing authority;

4. ~~Employees shall not be entitled to retroactive accumulation of leave as a result~~ The provisions of this section shall not affect employee accumulated leave accrued prior to the effective date of ~~amendments to~~ this ~~section~~ act;

5. The Director of the Office of Management and Enterprise Services and the Executive Director of the Oklahoma Merit Protection Commission shall cooperate to assist agencies in developing policies to prevent violence in state government workplaces without abridging the rights of state employees. Such policy shall include a paid administrative leave provision as a cooling-off period which the Director of the Office of Management and Enterprise Services is authorized to provide pursuant to the Administrative Procedures Act. Such leave shall not be charged to annual or sick leave accumulations;

6. State employees who terminated their employment in the state service on or after October 1, 1992, may be eligible to have sick leave accrued at the time of termination of employment restored if they return to state employment, provided that the state employees' enter-on-duty dates for reemployment occur on or before two (2) years after their termination of employment and they are eligible to accrue sick leave before the two (2) years expire;

7. Employees who are volunteer firefighters pursuant to the Oklahoma Volunteer Firefighters Act and who are called to fight a fire shall not have to use any accrued leave or need to make up any time due to the performance of their volunteer firefighter duties;

8. Employees who are reserve municipal police officers pursuant to Section 34-101 of Title 11 of the Oklahoma Statutes and who miss work in performing their duties in cases of emergency shall not have

to use any accrued leave or need to make up any time due to the performance of their reserve municipal police officer duties; and

9. Employees who are reserve deputy sheriffs pursuant to Section 547 of Title 19 of the Oklahoma Statutes and who miss work in performing their duties in case of emergency shall not have to use any accrued leave or need to make up any time due to the performance of their reserve deputy sheriff duties.

B. Nothing in the Oklahoma ~~Personnel~~ Career Service Act is intended to prevent or discourage an appointing authority from disciplining or terminating an employee due to abuse of leave benefits or absenteeism. Appointing authorities are encouraged to consider attendance of employees in making decisions regarding promotions, pay increases, and discipline.

C. Upon the transfer of a function in state government to an entity outside state government, employees may, with the agreement of the outside entity, waive any payment for leave accumulations to which the employee is entitled and authorize the transfer of the leave accumulations or a portion thereof to the outside entity.

SECTION 4. AMENDATORY 74 O.S. 2011, 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 has exhausted, or will exhaust, all types of paid leave and:

1. Who is eligible for and requires family leave pursuant to the provisions of the Family and Leave Medical Act of 1993, 29 U.S.C., 2601 et seq.; or

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;

3. Immediately after the death of a relative or household member, provided that the total leave received for this purpose shall not exceed five (5) days in any calendar year; 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:

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

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

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 extreme or life threatening;

4. “State employee” means a ~~permanent classified~~ career service employee or ~~a regular unclassified~~ an executive service employee ~~with one (1) year or more continuous service~~ with the state. The term "state employee" does not include ~~classified~~ career service employees ~~in probationary status~~ or ~~unclassified~~ executive service employees on temporary or other limited term appointments, except that those employees are eligible to receive shared leave as provided in paragraph 4 of subsection A of this section and the

leave with pay authorized by Section 840-2.23A of this title related to a presidentially declared national disaster; and

5. "Terminal" means likely to result in death within two (2) calendar years.

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 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.

F. Except as otherwise provided for in this subsection, the chief administrative officer of the employee shall determine the amount of donated leave an employee may receive and may authorize an employee to use up to a maximum of ~~two hundred sixty-one (261)~~ one hundred eighty (180) days of donated leave during total state employment. If the employee is suffering from an illness which has been certified in writing by a licensed physician or health care practitioner as being terminal and the employee who either has reached or shall reach in the near future the maximum amount as set out in this subsection, the chief administrative officer of the employee may approve additional donated leave upon written request of the employee.

G. The chief administrative officer of the employee shall require the employee to submit, prior to approval or disapproval of shared leave pursuant to paragraph 1 of subsection A of this section, 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 the leave is donated.

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.

I. Donated annual or sick leave is transferable between employees on an hour-to-hour basis irrespective of the hourly wage of the donating or receiving employee.

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

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

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.

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

SECTION 5. AMENDATORY 74 O.S. 2011, Section 840-4.6, as amended by Section 902, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2013, Section 840-4.6), is amended to read as follows:

Section 840-4.6 A. The State of Oklahoma, to recruit, retain and motivate a quality workforce for the purpose of providing quality services to the citizens of Oklahoma, shall provide a pay structure based on internal equity and external competitiveness balanced by the state's fiscal conditions. The state's goal shall be to provide a flexible and adaptable state employee pay system based on the market data found in relevant public and private sector markets.

B. The Director of the Office of Management and Enterprise Services shall ~~develop a salary schedule for the classified service and pay lines as appropriate to meet the needs of agencies~~ study, establish, assign and may make adjustments to pay structures for all career and executive service positions within the executive branch, excluding institutions under the administrative authority of the Oklahoma State Regents for Higher Education. The Office may develop market-based occupational pay structures. The pay structures established pursuant to this section for all career and executive service positions shall be initially established and published by January 1, 2015, and shall thereafter be reviewed for revision annually. The provisions of this section are not subject to the provisions of Article I of the Administrative Procedures Act.

C. The Director shall design a compensation system for all classified state employees. The compensation system, except for performance based adjustments, developed pursuant to this subsection shall be consistent with but not limited to the recommendations contained in the Classification and Compensation Reform Report from the Director, dated December 1998 and submitted to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives.

~~D. All executive branch state agencies who employ personnel in the unclassified service of the state, whose salaries are not~~

~~prescribed by law, shall establish salary schedules for such employees.~~

SECTION 6. REPEALER 74 O.S. 2011, Section 840-4.7, as amended by Section 903, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2013, Section 840-4.7), is hereby repealed.

SECTION 7. This act shall become effective July 1, 2014.

SECTION 8. 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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