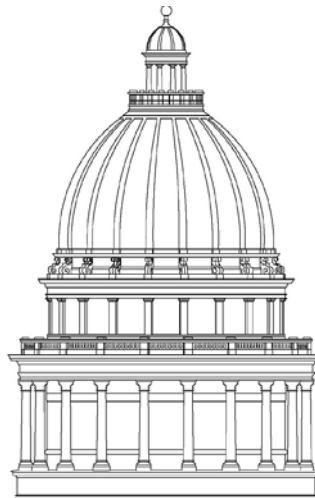


REPORT TO THE  
**UTAH LEGISLATURE**

Number 2010-08



**A Limited Review of the State's  
Career Service System**

July 2010

Office of the  
**LEGISLATIVE AUDITOR GENERAL**  
State of Utah





STATE OF UTAH

# Office of the Legislative Auditor General

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## Audit Subcommittee of the Legislative Management Committee

President Michael G. Waddoups, Co-Chair • Speaker David Clark, Co-Chair  
Senator Patricia W. Jones • Representative David Litvack

JOHN M. SCHAFF, CIA  
AUDITOR GENERAL

July 20, 2010

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Limited Review of the State's Career Service System** (Report #2010-08). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "John M. Schaff". The signature is stylized and cursive.

John M. Schaff, CIA  
Auditor General

JMS/lm



# Digest of A Limited Review of the State's Career Service System

Almost two-thirds of the approximately 24,000 state employees are considered to be career service, or merit, employees. Statutorily, a career service employee is one who “has successfully completed a probationary period of service in a position covered by the career service.” Career service systems were designed to protect public employees from unfair personnel practices occurring with political changes. Utah, like its surrounding states, must continually evaluate the balance between this need and its ability to maintain only the highest-performing employees. There have been legislative concerns regarding the difficulty in dismissing poor-performing employees. This audit reviewed potential alternatives to the state’s career service system.

**Utah Employs a Career Service Personnel System.** In order to receive federal funding for the administration of certain federal programs, Utah has established a career service system that is based on federally mandated merit principles. In fiscal year 2009, the state employed 15,784 career service employees, which was about two-thirds of the state’s workforce. Career service employees have the right to grieve certain personnel actions, a right not granted to non-career-service employees.

**H.B. 140 Modified Grievance Procedures.** The Legislature changed the Utah State Personnel Management Act by passing House Bill 140 during the 2010 Legislative General Session. The modifications eliminated the Career Service Review Board and limited personnel actions for which a career service employee could grieve.

**Three States Transitioned to At-Will Personnel Systems.** Texas, Florida, and Georgia do not have traditional career service systems, yet they maintain merit principles of fair and equitable treatment of employees. The decentralization of the personnel system in Texas allows managers more flexibility and autonomy. Florida failed in its attempt to completely eliminate career service status for employees, but was able to eliminate it for supervisor positions and above. New state employees or state employees who change positions in Georgia are not granted career service status.

**Other Utah State Entities Employ Different Personnel Systems.** Ninety-three percent of employees in the Department of Technology Services (DTS) relinquished their career service status in exchange for three-step salary increases. Since 2007, DTS has seen only a slight increase in the rate of dismissal for cause when compared to rates of other state agencies. The judicial branch operates under a career service system that is separate from the one used by the executive branch. It appears that the courts’ system has more stringent precedents, and

## Chapter I: Introduction

## Chapter II: Other Personnel Option Exist

managers take advantage of more performance management training opportunities than their counterparts in the executive branch. Managers in the judicial branch appear to be better prepared to dismiss poor-performing employees than managers in the executive branch.

**Surrounding States Employ Similar Career Service Systems.** Concerns regarding dismissing poor-performing employees are not unique to Utah. Arizona, Idaho, Nevada, and Wyoming also require progressive discipline and allow career service employees to grieve similar disciplinary actions. These states appear to have similar difficulties in dismissing poor-performing career service employees.

- I. We recommend that the Legislature consider the following options regarding the state's career service system:
- Maintain the current system with improvements discussed in Chapter III.
  - Adopt a procedure similar to that in the judicial branch, in which an employee could be dismissed after being formally disciplined twice.
  - Implement changes that have been made in other states, including the following:
    - Phasing out career service status for supervisors and higher positions
    - Phasing out career service status for employees who change positions within the state system
    - Requiring all new employees to be hired at will

### **Chapter III: Managers Can Better Use Available Performance Management Tools**

**Managers Do Not Always Document Discipline on Performance Evaluations.** During our limited review, we found 10 instances in which managers failed to document disciplinary action on performance evaluations. Violations for which employees were not cited on performance evaluations include viewing and downloading pornography on state computers, selling alcohol to a minor, and using one's position of authority to threaten an employee in another state agency.

**State Agencies Have Not Used Available Performance Management Resources.** Managers in state agencies have not taken advantage of available training provided by the Department of Human Resource Management. Managers in the judicial branch and Nevada appear to be better prepared to manage employee performance because they are required to be trained on performance management techniques. Additionally, only 14 percent of performance plans have been entered into DHRM's electronic performance management tool, called Utah Performance Management.

Recommendations to DHRM and agency managers can be found on page 23.

# REPORT TO THE UTAH LEGISLATURE

Report No. 2010-08

## **A Limited Review of the State's Career Service System**

July 2010

Audit Performed By:

Audit Manager                      Darin Underwood

Audit Supervisor                      David Pulsipher





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# Chapter I

## Introduction

Almost two-thirds of the approximately 24,000 state employees are considered to be career service, or merit, employees. Statutorily, a career service employee is one who “has successfully completed a probationary period of service in a position covered by the career service.” Career service systems were designed to protect public employees from unfair personnel practices occurring with political changes. Utah, like its surrounding states, must continually evaluate the balance between this need and its ability to maintain only the highest-performing employees. There have been legislative concerns regarding the difficulty of dismissing poor-performing employees. This audit reviews potential alternatives to the state’s career service system.

The *Code of Federal Regulations* requires a state’s personnel system to have merit principles in order for a state to receive federal funding for the administration of some federally funded programs. The Utah State Personnel Management Act (*Utah Code* 67-19) requires the Department of Human Resource Management (DHRM) to “establish a career service system” that complies with federal requirements.

House Bill 140 (H.B. 140), passed during the 2010 Legislative General Session, made some significant changes to the Utah State Personnel Management Act that will impact the career service system. It will likely take time to fully understand the impact this bill will have on the state’s career service system.

### Utah Employs a Career Service Personnel System

In order to receive federal funding for the administration of certain federal programs, Utah has established a career service system that is based on federally mandated merit principles. In fiscal year 2009, the state employed 15,784 career service employees, which was about two-thirds of the state’s workforce. Career service employees have the right to grieve certain personnel actions, a right not granted to non-career-service employees.

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**Two-thirds of state employees are career service employees.**

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Utah includes  
federally-required  
merit principles in its  
career service system.

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## **A Personnel System with Merit Principles Is Required to Receive Federal Funding**

The federal government requires that states' personnel systems include merit principles in order to receive funding for the administration of federal programs, such as Unemployment Insurance, Food Stamps, and Medicaid. A personnel system that uses merit principles is frequently referred to as a "career service system." The *Code of Federal Regulations* cites the following as merit principles:

- Open and fair recruiting practices
- Equitable and adequate compensation
- Job training
- Retention of quality employees, appropriate discipline for inadequate performance, and dismissal when necessary
- Fair treatment in accordance with federal equal employment and opportunity, and nondiscrimination laws
- Protection from partisan coercion

The Legislature codified these requirements in the Utah State Personnel Management Act. This act also requires DHRM to "[provide] a formal procedure for processing the appeals and grievances of employees without discrimination, coercion, restraint, or reprisal."

## **Most State Employees Are Career Service Employees**

Career service employees are statutorily classified under Schedule B of the State Personnel Management Act. All other state employees serve at will and are classified under Schedule A. Temporary employees, elected officials, department directors, and non-executive branch staff, are examples of Schedule A employees shown in Figure 1.1.

**Figure 1.1. Over One-Third of State Employees Are Non-Career-Service Employees.** 8,259 state employees were statutorily classified under Schedule A as of March 2010.

| Classification                             | Employees      |
|--|----------------|
| AA – Elected Officials                     | 110            |
| AB – Appointed Executives                  | 36             |
| AC – Governor’s Office                     | 88             |
| AD – Executive Directors’ Offices          | 310            |
| AE – Unskilled Positions                   | 550            |
| AF – Part-Time Employees                   | 84             |
| AG – Attorney General’s Office             | 430            |
| AH – USDB Teaching Staff                   | 295            |
| AI – Federal Right to Return Positions     | 3              |
| AJ – Seasonal Employees                    | 1,960          |
| AK – Elected Officials’ Offices            | 16             |
| AL – Temporary Employees                   | 994            |
| AM – DCC and GOED Executives/Professionals | 44             |
| AN – Legislative Employees                 | 248            |
| AO – Judiciary Employees                   | 1,134          |
| AP – Judges                                | 129            |
| AQ – Boards                                | 886            |
| AR – Statewide Policymakers                | 98             |
| AS – Other Appointed Employees             | 45             |
| AT – DTS Employees                         | 626            |
| AU – Patients/Inmates*                     | 173            |
| <b>Total</b>                               | <b>8,259**</b> |

\*An example of employees classified under Schedule AU is Utah Correctional Industries.

\*\*24,043 employees worked for the state in FY 2009.

Figure 1.1 shows that 8,259 state employees were classified under Schedule A and served at will as of March 2010. By administrative rule, these employees can be dismissed at any time and for any reason. The state employs approximately 24,000 persons. One difference between career service employees and non-career-service employees is that career service employees have the right to grieve certain personnel actions.

**The CSRB Administers  
The Grievance Process**

Employee grievances that go beyond the departmental level are administered by the Career Service Review Board (CSRB) administrator.<sup>1</sup> The administrator is appointed by the Governor. Career service employees are allowed to grieve promotions, dismissals,

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**Career service employees have the right to grieve certain personnel actions; non-career-service employees do not have this right.**

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<sup>1</sup> The Career Service Review Board will become the Career Service Review Office on July 1, 2010. The change was made as part of H.B. 140, which passed in the 2010 Legislative General Session.

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**Career service employees have the right to grieve to a hearing officer.**

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demotions, suspensions, written reprimands, violations of personnel rules, issues concerning the equitable administration of benefits, reductions in force, and disputes concerning abandonment of position to the CSRБ. The CSRБ administrator appoints a hearing officer if any of these issues cannot be resolved at the department level or through mediation. The CSRБ has the final decision.

The following are steps in the employee grievance process:<sup>2</sup>

- Step 1 – Verbal discussion with immediate supervisor
- Step 2 – Written grievance to immediate supervisor
- Step 3 – Written grievance to division director
- Step 4 – Written grievance to department director
- Mediation with CSRБ administrator<sup>3</sup>
- Step 5 – Written grievance to hearing officer (formal hearing)
- Step 6 – Written grievance to the CSRБ (formal hearing)

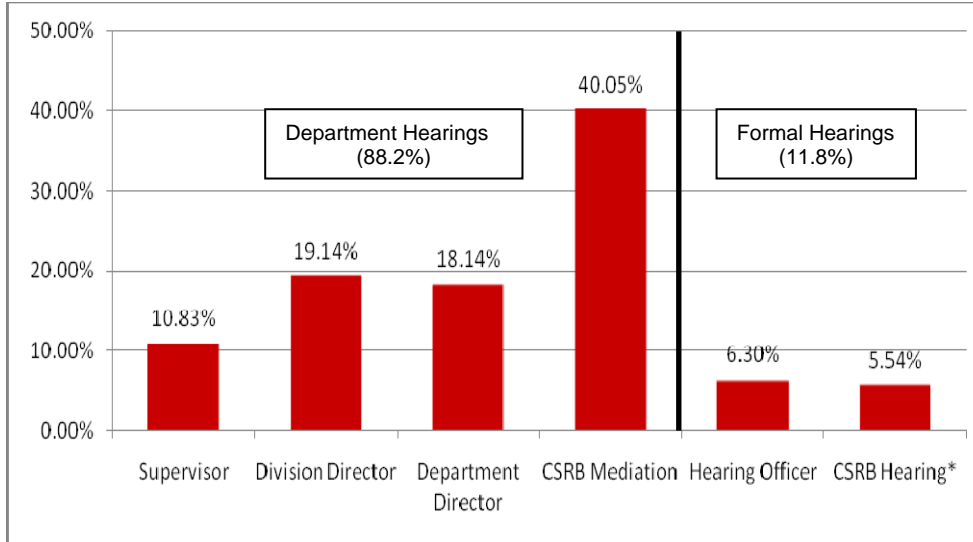
Historically, most grievances have been resolved prior to going before a hearing officer. Figure 1.2 shows that, from fiscal year 2005 to fiscal year 2009, only 11.8 percent of grievances were not resolved after mediation.

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<sup>2</sup> Steps 1 and 2 will be eliminated on July 1, 2010 as part of H.B. 140.

<sup>3</sup> The CSRБ administrator meets with both parties prior to a Step 4 grievance to determine if the CSRБ has jurisdiction over the grievance. Cases are frequently abandoned or dismissed based on lack of CSRБ jurisdiction at this point.

**Figure 1.2. From FY 2005 to FY 2009, 88.2 Percent of Grievances Were Resolved Prior to a Formal Hearing.** Grievances that are resolved through verbal discussions with immediate supervisors (Step 1) are not tracked.



*\*This step, which was a formal hearing by the Career Service Review Board, will be eliminated on July 1, 2010 due to changes made by H.B. 140.*

Most grievances are resolved prior to the involvement of a hearing officer, as shown in Figure 1.2. Recent legislation limits the reasons for which a career service employee can grieve, as mentioned below.

### H.B. 140 Modified Grievance Procedures

The Legislature changed the Utah State Personnel Management Act by passing H.B. 140 during the 2010 Legislative General Session. The following changes pertain to the subject matter addressed in this audit:

- The CSRB was eliminated as a grievance step.
- A verbal grievance to the immediate supervisor was eliminated as a grievance step.
- The offices of the State Auditor, the State Treasurer, the Utah Science Technology and Research Initiative, and the Public Lands Policy Coordinating Council were reclassified from Schedule B to Schedule AC.

**Most grievances are resolved before a formal hearing.**

**H.B. 140 will streamline the grievance process.**

**Changes from H.B. 140 may encourage agency managers to use performance management tools.**

- The CSRB no longer hears grievances for promotions, written reprimands, violations of personnel rules, and issues concerning equitable administration of benefits.
- An evidentiary hearing must be scheduled within 150 days after the CSRB administrator determines jurisdiction.

DHRM managers believe that these changes may increase manager involvement in performance management because agency managers will no longer fear that minor forms of discipline, such as a written reprimand, could be grieved. Additionally, human resource managers claim the changes due to H.B. 140 will likely decrease the time it will take to resolve employee grievances that go beyond the department level. Because the law has not gone into effect, this limited review does not speculate on its potential impact.

## **Audit Scope and Objectives**

The limited review of the state's career service system was requested by the Legislative Audit Subcommittee to find out if the personnel system meets the needs of the state. Specifically, this audit focuses on the following objectives:

- Compare Utah's personnel system with those of other states.
- Determine other personnel system options that may exist.
- Determine if state agencies are able to efficiently dismiss poor-performing employees.

To address these objectives, we compared Utah's personnel system with those from surrounding states and with those from three other states that have transitioned away from a typical personnel system. Additionally, we reviewed tools of the current personnel system that are designed to increase performance management.

During the audit, another legislative question arose regarding school district personnel practices. However, the review of school district personnel practices falls outside the scope of this audit. A formal review of personnel practices of school districts could be done as a separate audit if requested by the Legislative Audit Subcommittee.



Chapter II addresses some potential alternatives to Utah's career system. Chapter III cites management tools that could be better utilized within the state's career service system.

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## **Chapter II Other Personnel System Options Exist**

Texas, Georgia, and Florida have adopted personnel systems more centered on at-will employment while maintaining the merit principles required for federal funding. Hiring and dismissing employees appears to have become less problematic in these three states. None of the three states incentivized employees for giving up their career service status but instead chose to phase in the revamped personnel system over time. Concerns over dismissing poor-performing employees are not unique to Utah, however.

One department in Utah recently incentivized employees to move from the career service system. The Utah Department of Technology Services (DTS) gave employees a three-step salary increase to voluntarily give up their career service status. As with Texas, Georgia, and Florida, DTS appears to have a greater degree of freedom in personnel actions and has not experienced an abnormal increase of dismissals for cause since the department's creation in 2006.

The judicial branch employs a different career service system than the executive branch. Unlike the executive branch, the courts' system requires managers to be trained on how to evaluate employees. It appears that managers in the judicial branch dismiss employees with greater ease than the executive branch.

This chapter lists several advantages and disadvantages of moving employees out of career service systems. Appendix A summarizes potential options for changes in Utah's career service system if modifications are deemed necessary.

### **Three States Transitioned to At-Will Personnel Systems**

Texas, Florida, and Georgia do not have traditional career service systems. These states appear to have increased agency autonomy in hiring practices and flexibility in disciplining poor-performing

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**Appendix A  
summarizes pros and  
cons of potential  
changes to the state's  
personnel system.**

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**Texas, Florida, and Georgia have non-traditional personnel systems while maintaining the federally required merit principles.**

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**Texas does not allow employees to grieve beyond the agency level.**

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**New state employees in Georgia are not given career service status.**

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employees. *Governing* magazine concluded the following based on the changes made by these three states:

- Time to complete key personnel transactions, such as hiring and dismissing employees, has decreased significantly.
- There is no unusual spike in political hiring and firing.
- There is a higher potential for dismissal of tenured, high-salaried employees, which may decrease institution knowledge and lower employee morale.

### **Texas Abolished a Traditional Career Service Personnel System in 1985**

The Texas State Legislature elected to eliminate its short-lived career service system on June 12, 1985, amid concerns of centralizing the state's personnel system. While Texas maintains a centralized classification of job titles and pay ranges, individual agencies can hire and discipline employees without constraints seen in most career service systems. Typical constraints can include difficulty in disciplining employees and lengthy grievance processes.

Texas adheres to performance management principles, such as progressive discipline, and allows state employees to appeal disciplinary action to an ad hoc panel of peers and a hearing officer. However, these panels only have the authority to make recommendations; final decisions are made by the agency director. Human resource managers claim that appeals are concluded within three months.

### **Georgia Eliminated the Career Service Designation For All New State Employees in 1996**

All state employees in Georgia who started after July 1, 1996, were not granted career service status. Additionally, existing employees lost their career service status after they moved to other positions in the state. Personnel managers in Georgia estimate that only 15 percent of all state employees had career service status as of March 2010.

Individual state agencies in Georgia are now allowed to create their own job titles and pay ranges, independently discipline employees, and give raises and promotions as needed. Since the changes, state

agencies in Georgia claim they are able to fill their employment needs in a timelier manner.

Georgia personnel managers believed that the now-abandoned career service system was overly time-consuming and costly to the state. They claim it would take more than one year to dismiss a poor-performing career service employee under the abolished state career service system, whereas it can take less than 15 days under the current personnel system.

Despite the abolition of the career service system, personnel managers in Georgia do not believe dismissals for cause have increased. Georgia still uses performance management techniques, such as progressive discipline, and will not dismiss an employee unless there is ample cause. A high-ranking personnel manager in Georgia claims that most existing state employees likely did not even notice the changes in the personnel system.

### **Florida Revoked Career Service Status for All Supervisors in 2001**

Based on a report issued by the Florida Council of 100<sup>4</sup> that referred to the Florida career service system as “antiquated and cumbersome,” the state made significant changes in 2001. In its report “Moving from Protection to Performance,” the Florida Council of 100 reported that

the citizens of Florida should not, and we believe would not want to provide a protected status for state employees that is above and beyond the rights all other citizens enjoy in their own jobs. Furthermore, this protection makes managing human resources cumbersome, is demotivating for managers, and damages the reputation of all state employees . . . after all, productive state employees don’t need protected status, and under-performers don’t deserve it.

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<sup>4</sup> The Florida Council of 100 is a private, non-profit, non-partisan association that includes a cross-section of key business leaders in Florida. The council serves at the request of the governor and works with the governor and state legislature to promote the economic growth and well-being of Florida.

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**Supervisors in Florida are employed at will and do not have traditional career service rights.**

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**Florida state employee unions strongly opposed personnel system reforms.**

Though the former governor and one legislative house originally wanted all 136,000 state employees to serve at will, a compromise was reached, requiring that only supervisor positions convert to at-will. Additionally, Florida eliminated the notions of seniority and reduced the appeals process for all state employees. The 16,000 supervisors in the state no longer have the right to grieve personnel decisions.

Agencies in Florida are also now able to recruit and hire based on their own needs. Standardized procedures, such as written tests and minimum posting time for job openings, are no longer required. Though they could not provide a baseline, the Florida Department of Management Services estimates that the time for personnel action has been reduced by 70 percent due to the changes.

Unlike employee unions in Texas and Georgia, Florida employee unions opposed career service reform. The Council of American Federation of State, Municipal, and Council Employees in Florida strongly opposed the proposed changes. The Florida Supreme Court eventually ruled in the state's favor, and the proposed changes to the career service system were codified.

### **Other Utah State Entities Employ Different Personnel Systems**

In 2007, the majority of DTS employees relinquished their career service status in exchange for three-step salary increases. Since this time, DTS has seen only a slight increase in the rate of dismissal for cause when compared to rates of other state agencies.

The judicial branch operates under a career service system that is separate from the one used by the executive branch. It appears that the courts' system has more stringent precedents, and managers take advantage of more performance management training opportunities than their counterparts in the executive branch. Managers in the judicial branch appear to be better prepared than managers in the executive branch to dismiss poor-performing employees.

## **DTS Increased Salaries for Employees Who Converted to At-Will Employment**

DTS recently incentivized employees who would voluntarily give up their career service status. It appears that DTS has a greater degree of freedom than other state agencies in personnel actions. While the department dismissal rate is slightly higher than the rate for career service employees, DTS has not experienced an abnormal number of dismissals for cause since the Legislature created the department in 2006.

DTS employees were given the option to voluntarily give up their career service status in exchange for a three-step salary increase. Additionally, all new employees to the department will be Schedule A employees, which means they will not have career service status. As of May 2010, 92.5 percent of DTS employees that were eligible to convert were non-career-service employees. The other 7.5 percent of DTS employees elected to maintain their career service status.

DTS has established its own policies for recruiting and disciplining employees, and the department maintains the use of progressive discipline and performance management. All dismissals for cause are reviewed by the Department of Human Resource Management field office manager, who makes a recommendation to the department director. The department director then makes the final decision. Non-career-service employees at DTS do not have the right to grieve dismissals beyond the department director.

DTS has only dismissed 7 of its 626 non-career-service employees for cause since fiscal year 2007, or an average of 0.37 percent per year. An average of 0.30 percent of all career service employees in the state were dismissed for cause each year during fiscal years 2007 to 2009.

The similar dismissal rate is likely due to policies and procedures DTS has in place for disciplining employees. DTS' discipline process is comparable to the process for career service employees, with the exception being that non-career-service employees at DTS do not have the right to grieve beyond the department director. The human resource field office manager for DTS believes that agency managers are actually more likely to utilize performance management tools in this environment because they do not need to be concerned that the action will be grieved beyond the department.

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**DTS employees were given a three-step salary increase to convert to at-will employment.**

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**93 percent of DTS employees converted to at-will employment.**

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**DTS has not experienced a dramatic increase in dismissals for cause since the conversion.**

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**The conversion to at-will employment cost DTS \$3.5 million per year.**

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**The judicial branch will typically dismiss an employee after two incidences of formal discipline.**

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While this option appears to have reduced some cumbersome personnel restrictions that exist among Schedule B employees, it was costly to the state. The incentive costs DTS \$3.5 million per year.

### **The Judicial Branch Appears to Be More Able To Dismiss Poor-Performing Employees**

The judicial branch is not statutorily bound by the personnel system employed by the executive branch. Instead, the judicial branch's personnel system is governed by administrative rule. While the career service systems employed by the two branches of government have similarities, it appears that the judicial branch is better prepared to dismiss poor-performing employees.

Though managers in the courts are required to follow progressive disciplinary actions that are similar to those used in the executive branch, poor-performing employees appear to be dismissed relatively quicker after policy violations. The judicial branch human resource director claims that employees are typically dismissed after their second written reprimand. He said this practice is supported by precedent, and the office receives very few grievances.

In contrast, the executive branch consists of multiple agencies, and each has its own set of precedents. This could be one reason why the judicial branch is able to dismiss poor-performing employees more readily. While most dismissals of poor-performing court employees happen within 60-90 days, we have been told that it is not uncommon to take more than one year to dismiss a poor-performing employee in the executive branch.

It would be difficult to directly compare how court managers and state agency managers handle similar violations. However, there were a few recent instances in which state agency managers appeared to be more lenient than court managers in disciplining employees who committed similar violations. For example, a court employee was recently dismissed for not providing adequate supervision to delinquents. We have found instances in state agencies in which employees only received minor discipline for similar policy violations, even if it was not their first offense.

More effective action on the part of the court managers is possibly due to the policy that all new managers be trained on how to



effectively manage employee performance. During this training, court managers learn how to discipline employees and document discipline on performance appraisals and corrective action plans. Chapter III of this report addresses concerns with the lack of training that takes place in the executive branch.

**The judicial branch requires performance management training for all new managers.**

### **Non-Career-Service Employees Are Dismissed For Cause More Frequently than Career Service Employees**

Agency managers are able to dismiss non-career-service employees more easily than they can dismiss career service employees. As mentioned previously, non-career-service employees can be dismissed for cause for any reason and do not have the right to grieve personnel actions beyond their department. Figure 2.2 shows a comparison of the average dismissals for cause of career service employees, non-career-service employees, and employees from the judicial branch from fiscal years 2007 through 2009.

**Figure 2.2. Non-Career-Service Employees and Judicial Branch Employees Are Dismissed for Cause at a Higher Rate than Career Service Employees.** The judicial branch employs a separate career service system.

|  | <b>State Career Service*</b> | <b>Non-career-service*</b> | <b>Judicial Branch</b> |
|--|------------------------------|----------------------------|------------------------|
| Employees (FY 2009)                                      | 15,784                       | 6,570                      | 1,134                  |
| Average Employees Dismissed for Cause (FY2007 – FY 2009) | 48                           | 127                        | 9                      |
| <b>Percent Dismissed for Cause</b>                       | <b>0.30%</b>                 | <b>1.93%</b>               | <b>0.82%</b>           |

*\*Includes only executive branch*

The dismissal rate for non-career-service employees was 5.4 times higher than that of the career service employees during fiscal years 2007 through 2009. The dismissal rate for judicial branch was 1.7 times higher than the executive branch during the same time.

**Non-career-service employees and judicial employees are dismissed at a higher rate than career service employees.**

It appears that managers of non-career-service employees operate in a less-restrictive climate than those who manage career service employees. The discrepancy of dismissal rates between non-career-service employees and career service employees can partially be attributed to the ability of managers to dismiss a poor-performing employee without the possibility of a grievance beyond the

department. The state may be able to increase performance management by emulating similar strategies used by DTS and the judicial branch.

## **Surrounding States Employ Similar Career Service Systems**

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**Arizona, Idaho, Nevada, and Wyoming employ personnel systems similar to that used in Utah.**

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While a few other states already mentioned have lessened career service rights, Utah's career service system is similar to personnel systems used by surrounding states. Arizona, Idaho, Nevada, and Wyoming also require progressive discipline and allow career service employees to grieve similar disciplinary actions.

Concerns regarding dismissing poor-performing employees are not unique to Utah. Surrounding states appear to have similar difficulties in dismissing poor-performing career service employees. Upper-level human resource managers from Arizona, Idaho, and Nevada claim that one of their biggest difficulties in dismissing poor-performing employees is the lack of documented progressive discipline by managers. A high-level human resource manager from Wyoming claims that dismissing poor-performing career service employees can be time-consuming for managers in his state as well.

Each of these surrounding states allows career service employees to grieve actions related to their employment. While they would not cite specific cases, each also admits their states are sometimes not able to dismiss career service employees, even if the employees commit grievous violations.

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**Advantages of career service systems include greater security and protection for unfair treatment.**

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Human resource managers from these states also believe that their career service system has similar advantages to those in Utah. Human resource managers from Idaho and Nevada claim that their career service systems give employees a greater sense of security. Additional advantages include protection from unfair treatment, the right to grieve, and fair hiring practices. These are all advantages that career service employees in Utah enjoy as well.

In summary, while Utah's career service system appears to be similar to those used in surrounding states, other states and public entities have made major personnel system changes in order to

increase their flexibility and autonomy. Timely discipline of poor-performing employees can increase overall agency efficiency by replacing employees who may be detrimental to organizations with more qualified candidates. Appendix A summarizes potential advantages and disadvantages of emulating changes done by other states and public entities.

Furthermore, the Legislature may choose to adopt some of the modifications made by other states in order to increase agency flexibility and autonomy. Chapter III discusses ways in which agency managers could improve performance management within the current personnel system without major personnel system reforms.

## **Recommendation**

- I. We recommend that the Legislature consider the following options regarding the state's career service system:
  - Maintain the current system with improvements discussed in Chapter III.
  - Adopt a procedure similar to that in the judicial branch, in which an employee could be dismissed after being formally disciplined twice.
  - Implement changes that have been made in other states, including the following:
    - Phasing out career service status for supervisors and higher positions
    - Phasing out career service status for employees who change positions within the state system
    - Requiring all new employees to be hired at-will

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## **Chapter III**

# **Managers Can Better Use Available Performance Management Tools**

Agency managers do not always document discipline in employee performance evaluations. We believe that one possible factor for inadequate documentation in performance evaluations is that less than 8 percent of managers have taken advantage of an available managerial training course provided by the Department of Human Resource Management (DHRM). Directors of state agencies should do more to ensure that new managers are adequately trained on managing performance and administering disciplinary action. Perhaps Utah could require all new managers to attend a training course on these topics, as is done by other public entities we reviewed.

### **Managers Do Not Always Document Discipline on Performance Evaluations**

During our limited review, we found several instances in which managers failed to document disciplinary action. Figure 3.1 shows 10 examples of violations that necessitated formal disciplinary action. The figure also shows the area on the next performance evaluation in which it appears this disciplinary action should have been noted, but was not. These examples were found in a review of discipline from three state agencies.

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**Several employees received favorable performance evaluations despite committing violations that warranted formal discipline.**

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**Figure 3.1. Managers Do Not Always Document Discipline on Performance Evaluations.** These cases were found while doing a limited review of disciplinary actions in three state agencies. In all 10 incidents, the employees received positive marks in the corresponding areas of their subsequent evaluations.

**Agency managers from three state agencies did not consider employee discipline during subsequent performance evaluations.**

| Discipline           | Violation  | Performance Expectation  | Evaluation Results   |
|----------------------|--|--|--|
| 5-Day Suspension     | Downloaded 52 sexually explicit images   | Compliance with computer acceptable use policy                           | Successful   |
| 3-Day Suspension     | Sold alcohol to a minor  | Sales and security related to minors                                     | Pass   |
| 3-Day Suspension     | Used position of authority to threaten employee in another agency                                | (1) Interpersonal and verbal communication skills<br>(2) Professionalism | (1) Met performance standards<br>(2) Met performance standards |
| 2-Day Suspension*    | Demonstrated inappropriate language/behavior during an anger management class                    | (1) Interpersonal and verbal communication skills<br>(2) Professionalism | (1) Met performance standards<br>(2) Met performance standards |
| 1-Day Suspension     | Pulled over motorist while in private vehicle  | (1) Professionalism<br>(2) Compliance with policies and procedures       | (1) Successful<br>(2) Successful                               |
| Letter of Reprimand* | Used inappropriate language while teaching a moral reconnection class                            | Communication skills   | Successful   |
| Letter of Reprimand  | Sprayed aerosol disinfectant at an inmate  | Application of security procedures                                       | Successful   |
| Letter of Reprimand  | Committed multiple violations of attendance policy   | Adherence to attendance policy   | Successful   |
| Letter of Reprimand  | Gave shot after pricking own finger with the same needle   | Application of knowledge, judgment, and problem-solving                  | Successful   |
| Letter of Reprimand  | Used inappropriate language, was inattentive to duties, committed violations of workplace policy | [Satisfactory] work habits   | Successful   |

\*The same employee committed both offenses.

Figure 3.1 shows examples of performance evaluations in which managers failed to properly document disciplinary action.

Additionally, some performance evaluations gave high praise to employees who were disciplined during the time period in which they were evaluated. For example, a supervisor wrote the following for the employee who received a letter of reprimand for inappropriate

language, inattention to duties, and violations of workplace policy: “[employee] is a good teacher and role model.”

While this sample is not intended to represent all managers throughout the state, these examples show that managers may need additional training and accountability. Only 1.7 percent of managers in the three agencies have attended the managerial training provided by DHRM.

### **State Agencies Have Not Used Available Performance Management Resources**

Managers in state agencies have not taken advantage of available training provided by DHRM. Additionally, only 14 percent of performance plans have been entered into DHRM’s new performance management tool called Utah Performance Management (UPM). We believe that agency managers could improve performance management by using these two available resources.

### **Only 8 Percent of Agency Managers Have Attended A DHRM Training on Effective Management**

DHRM provides a three-day training course for agency managers, called “The Art of Science and Supervision,” that is designed to promote effective management techniques and employee evaluation. An objective of this course is to help managers understand how to manage employee performance and administer corrective action when needed. Currently, this course is considered optional. In contrast, manager training is *required* by the judicial branch to help agency managers improve performance management. Increasing manager knowledge is one way that state agencies could improve employee performance and dismiss poor-performing employees more quickly. Figure 3.2 shows the trained managers by agency as of April 2010.

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**Only 1.7 percent of managers in these three agencies received DHRM training on performance management.**

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**Most managers of state agencies have not been trained on managing employee performance.**

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**Figure 3.2. Only 7.6 Percent of Agency Managers Have Attended a DHRM Training Course on Effective Management.** This course is available to all managers in the state.

| Agency                                | Total Managers | Trained Managers | Percent Trained |
|---------------------------------------|----------------|------------------|-----------------|
| Agriculture                           | 24             | 0                | 0.0%            |
| Alcoholic Beverage Control            | 57             | 0                | 0.0             |
| Attorney General                      | 68             | 0                | 0.0             |
| Financial Institutions                | 10             | 0                | 0.0             |
| Governor's Office                     | 42             | 0                | 0.0             |
| Other*                                | 24             | 0                | 0.0             |
| SITLA                                 | 26             | 0                | 0.0             |
| State Auditor, State Treasurer, PLPCO | 23             | 0                | 0.0             |
| Utah National Guard                   | 31             | 0                | 0.0             |
| Human Services                        | 630            | 8                | 1.3             |
| Technology Services                   | 131            | 2                | 1.5             |
| Public Safety                         | 164            | 3                | 1.8             |
| Transportation                        | 354            | 9                | 2.5             |
| Board of Education                    | 185            | 5                | 2.7             |
| Corrections, P&P, Public Service      | 314            | 9                | 2.9             |
| Natural Resources                     | 345            | 10               | 2.9             |
| Administrative Services               | 82             | 3                | 3.7             |
| Commerce                              | 33             | 2                | 6.1             |
| Community & Culture                   | 48             | 3                | 6.3             |
| Health                                | 215            | 15               | 7.0             |
| Workforce Services                    | 215            | 16               | 7.4             |
| Environmental Quality                 | 71             | 16               | 22.5            |
| Insurance                             | 13             | 5                | 38.5            |
| Human Resource Mgmt                   | 45             | 28               | 62.2            |
| Tax Commission                        | 111            | 96               | 86.5            |
| Labor Commission                      | 22             | 20               | 90.9            |
| <b>Total</b>                          | <b>3,283</b>   | <b>250</b>       | <b>7.6%</b>     |

\*"Other" includes Capitol Preservation, Career Service Review Board, Navajo Trust Administration, Medical Education Council, Utah Science Technology and Research, and Department of Veteran's Affairs.

**The DHRM training course is designed to help managers maximize employee performance.**

Most agency managers of Schedule B employees have not taken advantage of the managers' training course offered by DHRM, as shown in Figure 3.2.

Unlike the executive branch, the judicial branch requires all managers to attend a training course within their first year as a manager that is similar to the DHRM training course. In our review of surrounding states, we found that Nevada requires that all managers attend a training course on employee evaluation within their first six months as a manager. Nevada also requires that all managers attend at least 40 hours of continuing managerial education every three years. Courses may include equal employment opportunity, interviewing and



hiring, alcohol and drug testing, progressive disciplinary procedures, and handling of grievances.

While we recognize that merely attending training does not guarantee good management skills, we believe that agency managers in Utah could more effectively evaluate employees by attending DHRM's training course. We recommend that state agencies encourage all new managers to attend the DHRM training course on how to be effective managers. Additionally, we recommend that DHRM increase agency awareness of this training course. If attendance does not improve, the Legislature may wish to require new managers to take the course.

### **Most Agency Managers Are Not Using UPM**

Under the direction of DHRM, the Department of Technology Services (DTS) has designed an electronic performance management tool called Utah Performance Management (UPM) to help agency managers improve employee performance. Administrative rule will require all agencies to enter all performance plans into UPM by July 1, 2010, unless granted a waiver by the DHRM director.

Some state agencies whose employees do not have regular access to computers, such as the Department of Natural Resources, will likely be granted a waiver. However, we are concerned that only 14.1 percent of employee plans have been entered into the required format as of May 2010. Figure 3.3 shows the plans entered by agency.

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**Nevada requires managers to be trained on performance management.**

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**Agency managers could better manage employee performance by using the Utah Performance Management tool provided by DHRM.**

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**Figure 3.3 Only 14.1 Percent of Employee Performance Plans Have Been Entered Into UPM.** All agencies will be required to use this resource by July 1, 2010.

| Agency                                | Plans Completed | Percentage of Plans Completed |
|---------------------------------------|-----------------|-------------------------------|
| Agriculture                           | 0               | 0.0%                          |
| Alcohol and Beverage Control          | 2               | 0.0                           |
| Attorney General                      | 0               | 0.0                           |
| Commerce                              | 0               | 0.0                           |
| Community and Culture                 | 0               | 0.0                           |
| Environmental Quality                 | 0               | 0.0                           |
| Financial Institutions                | 0               | 0.0                           |
| Labor Commission                      | 0               | 0.0                           |
| National Guard                        | 0               | 0.0                           |
| SITLA                                 | 0               | 0.0                           |
| Transportation                        | 0               | 0.0                           |
| Health                                | 7               | 1.0                           |
| Other**                               | 1               | 1.1                           |
| State Auditor, State Treasurer, PLPCO | 1               | 1.2                           |
| Public Safety                         | 29              | 2.0                           |
| Human Services                        | 116             | 3.0                           |
| Board of Education                    | 112             | 7.0                           |
| Natural Resources                     | 192             | 13.0                          |
| Administrative Services               | 74              | 17.0                          |
| Corrections, P&P, Public Service      | 480             | 21.0                          |
| Insurance                             | 21              | 26.0                          |
| Workforce Services                    | 807             | 38.0                          |
| Tax Commission                        | 316             | 39.0                          |
| Governor's Office                     | 167*            | 89.0                          |
| Technology Services                   | 723             | 95.0                          |
| Human Resource Management             | 166             | 98.0                          |
| <b>Total</b>                          | <b>3,214</b>    | <b>14.1%</b>                  |

\*Excludes board members

\*\*Other\*\* includes Capitol Preservation, Career Service Review Board, Navajo Trust Administration, Medical Education Council, Utah Science Technology and Research, and Department of Veteran's Affairs.

We believe that agency managers could be more effective in managing employee performance by using this resource.

### **Career Service System Can Allow Undesirable Career Service Employees to Maintain Employment**

During this limited review, we detected instances in which state agencies were not able to dismiss career service employees who committed egregious violations of statute, administrative rule, and policy. In addition, other career service employees grieved disciplinary actions for several years before all appeal options had been exhausted. Anomalous cases and time-consuming appeals are two costs of maintaining the current career service system.

**The state was not able to dismiss three employees who committed serious violations.**

## Recommendations

1. We recommend that state agencies require all new managers to attend the DHRM training course on how to be effective managers.
2. We recommend that DHRM place greater emphasis on encouraging all managers in the state to attend their training course “The Art and Science of Supervision.”
3. We recommend that DHRM consider whether management training should be required for all managers in the state.
4. We recommend that DHRM ensure that all agency managers use Utah Performance Management.

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## **Appendix**

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## Appendix A

### Career Service System Options

| Option  | Potential Advantages  | Potential Disadvantages  | Precedent  |
|---|---|--|--|
| Maintain status quo.  | <ol style="list-style-type: none"> <li>1. Established policies and procedures</li> </ol>  | <ol style="list-style-type: none"> <li>1. Time-consuming discipline process</li> <li>2. Difficult to dismiss poor-performing employees</li> <li>3. Technicalities in the grievance process may allow poor-performing employees to maintain employment</li> </ol> | <ol style="list-style-type: none"> <li>1. Current personnel system</li> <li>2. Similar to Arizona, Idaho, Nevada, and Wyoming</li> </ol> |
| Encourage increased manager training and accountability (see Chapter III).                        | <ol style="list-style-type: none"> <li>1. Established policies and procedures</li> <li>2. Enhanced manager participation in performance management</li> <li>3. Improved manager understanding of discipline process</li> <li>4. Greater ease in dismissing poor-performing employees</li> </ol> | <ol style="list-style-type: none"> <li>1. Time-consuming discipline process</li> <li>2. Technicalities in the grievance process may allow poor-performing employees to maintain employment</li> </ol>  | <ol style="list-style-type: none"> <li>1. Nevada</li> <li>2. Utah Courts' system</li> <li>3. Murray School District</li> </ol>           |
| Encourage existing employees to give up career service status in exchange for monetary incentive. | <ol style="list-style-type: none"> <li>1. Increased ability to dismiss poor-performing employees</li> <li>2. Increased flexibility in personnel actions</li> <li>3. Increased employee performance</li> </ol>   | <ol style="list-style-type: none"> <li>1. Increased ability for political personnel actions</li> <li>2. Decreased employee morale</li> <li>3. Difficult to operate two personnel designations simultaneously</li> <li>4. Costly to state</li> </ol>              | <ol style="list-style-type: none"> <li>1. Utah DTS</li> </ol>  |
| Eliminate career service status for supervisor and manager positions                              | <ol style="list-style-type: none"> <li>1. Increased ability to dismiss poor-performing supervisors and managers</li> <li>2. Increased ability to dismiss poor-performing employees in areas of responsibility</li> <li>3. Increased manager/supervisor accountability</li> </ol>                | <ol style="list-style-type: none"> <li>1. Increased ability for political personnel actions</li> <li>2. Decreased employee morale</li> <li>3. Difficult to operate two personnel designations simultaneously</li> </ol>  | <ol style="list-style-type: none"> <li>1. Florida</li> <li>2. Washington D.C.</li> </ol>   |
| Require new employees to be hired at-will.  | <ol style="list-style-type: none"> <li>1. Increased ability to dismiss poor-performing employees</li> <li>2. Increased flexibility in personnel actions</li> <li>3. Increased employee performance</li> </ol>   | <ol style="list-style-type: none"> <li>1. Increased ability for political personnel actions</li> <li>2. Decreased employee morale</li> <li>3. Difficult to operate two personnel designations simultaneously</li> </ol>  | <ol style="list-style-type: none"> <li>1. Georgia</li> <li>2. Texas</li> </ol>   |
| Require current employees who change positions to forfeit career service status.                  | <ol style="list-style-type: none"> <li>1. Increased ability to dismiss poor-performing employees</li> <li>2. Increased flexibility in personnel actions</li> <li>3. Increased employee performance</li> </ol>   | <ol style="list-style-type: none"> <li>1. Increased ability for political personnel actions</li> <li>2. Decreased employee morale</li> <li>3. Difficult to operate two personnel designations simultaneously</li> </ol>  | <ol style="list-style-type: none"> <li>1. Georgia</li> <li>2. Florida</li> </ol>   |

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## **Agency Responses**

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## State of Utah

GARY R. HERBERT  
*Governor*

GREG BELL  
*Lieutenant Governor*

## Department of Human Resource Management

JEFF C. HERRING, JD, MBA, SPHR  
*Executive Director*

JEAN MILLS-BARBER, MBA, SPHR  
*Deputy Director*

July 1, 2010

John Schaff, Auditor General  
Legislative Auditor's Office  
W315 State Capitol Complex  
Salt Lake City, Utah 84114

Dear Mr. Schaff,

I have reviewed the Audit Report No. 2010-08 entitled "A Limited Review of the State's Career Service System". I believe the Audit Report captures many of the issues surrounding Utah's Career Service System.

DHRM is committed to finding ways to promote productivity and proficiency in the State's workforce. This is demonstrated by the actions of DHRM in the past two legislative sessions in supporting legislation that moved the State towards this goal. Specifically, the passage of SB 126 in the 2009 General Legislative Session and subsequent Administrative Rules amendments which changed the reduction in force (RIF) process to focus on proficiency as opposed to predominately being focused on seniority (time in employment with the State). Also, in the 2010 General Legislative Session, DHRM supported and pushed for the passage of HB 140 (Second Substitute) which streamlined the current career service process by removing numerous grievable items, removing steps from the grievance process, and added timeframes to expedite the grievance process, all of which are reported in this Audit Report.

I am particularly pleased with this Audit Report's focus on the importance of performance management. It has long been the goal of DHRM to provide tools that help increase the capacity of managers and supervisors to manage and lead. In my opinion, performance management is the foundation and key to an effective workforce. DHRM's new performance management system (UPM), should be a valuable tool in delivering tools to help make this important process more effective.

I am also pleased with the Audit Report's focus on manager training and development. This function is part of the core statutory mission of DHRM and, in my experience, has a significant return on investment. DHRM will continue to grow and develop its training and development opportunities and tools through its flagship program, the Utah Leadership Institute (ULI).

Finally, I understand the complex issues that surround a formal career service system. The Audit Report correctly identifies many of the items that lead to this complexity. In a political environment, an organization should be free of a “spoils system”, which is the cause of the rise for many civil service/career service reforms. However, often the processes that are associated with career service systems, can slow down or stifle the performance management efforts within an organization.

Overlaying these management complexities are fiscal implication as well. Some of the federal grants that are obtained by State agencies require the existence of “merit principles”. It is DHRM’s position that “merit principles” are good for any organization, public or private. “Merit principles” espouse such things as hiring, disciplining, and promoting based upon merit. “Merit principles” are independent from any formal career service system and should remain in place regardless of whether a formal career service system exists in the future. Without accountability and merit based decision making by management, the threat to return to a “spoils system” or a process where decisions are based upon other non-meritorious factors becomes too great of a threat.

The State of Utah is currently one of the leaders in the management of its workforce as is demonstrated by the high grade (one of the top 5 states) Utah received in the “People” section of the 2008 Pew Foundation Grading the States Report. The State of Utah and DHRM are progressive in the management of our workforce with almost one-third of the State’s workforce already exempt from the formal career service system. DHRM believes that its current course and philosophy will enable Utah to continue as a leader in the management of its workforce.

DHRM’s position is that “merit principles” can be used and enhanced under the current career service structure. DHRM’s efforts in the past and forward looking philosophy on performance management is aligned with the focus on performance, accountability, and merit-based decisions. However, if the Legislature does elect to study Utah going in a direction away from a formal career service system, DHRM would like to be part of the discussion on the subject, as a great deal of time has already been spent studying other State’s reforms and current structure.

Again, DHRM welcomes the scrutiny this Audit Report provides to the complex issues surrounding Utah’s career service systems. We welcome the focus and emphasis placed upon the use of UPM and the training and development tools that ULI provide. We also appreciate the time spent by the Legislative Auditor’s Office to understand these complex issues.

Sincerely,



Jeff C. Herring, J.D., M.B.A., S.P.H.R.  
Executive Director, DHRM



State of Utah

GARY R. HERBERT  
Governor

GREGORY W. BELL  
Lieutenant Governor

## CAREER SERVICE REVIEW OFFICE

ROBERT W. THOMPSON  
Administrator

July 12, 2010

Dear Mr. Schaff,

I have carefully reviewed the Auditor General's July 2010 **REPORT TO THE UTAH LEGISLATURE** (Report) No. 2010-08 entitled "*A Survey of the States Career Service System*". This report provides a clear and concise overview of the States Career Service System and accurately captures the challenges inherent not only in the States Career Service System, but any personnel system based on merit principles. As the administrator for the Career Service Review Office (CSRO/Office), I have reviewed this report from the position of the CSRO, which is statutorily required to be a neutral or non-vested entity in decisions regarding the employee merit system. From this neutral position I believe the Office is uniquely able to view both the strength and weaknesses associated with the States Career Service System. It is from this perspective that I comment on the State Auditor's Report.

At the outset, it should be noted that since fiscal year 2003-04 the number of employee grievances filed under the States Career Service System have steadily declined. In fiscal year 2003-04 the number of employee grievances plateaued at a record one hundred twenty-nine (129) total grievances. Each subsequent year thereafter, there has been a decrease in the total number of employee grievances. Indeed, during fiscal year 2008-09 the total number of employee grievances filed under the states Grievance and Appeal Procedures dropped to a record low fifty-seven (57) grievances<sup>1</sup>.

Importantly, this drop in total grievances coincides generally with the recent consolidation of Human Resource Management under a single department. From the Career Service Review Office's perspective these numbers are encouraging and denote increased performance management and enhanced work place efficiencies. While it is too early to make a determination from this data alone, it appears that the consolidation of Human Services under a single department has had a positive impact on the States Career Service System.

In addition, the legislature just amended the states Grievance Procedures to not only streamline the grievance process but reduce the actual issues that can be appealed to the CSRO. These changes, along with DHRM's increased emphasis on performance management, portend more efficiencies and cost savings under the states current system.

Based upon these factors, I have few comments regarding the Auditor General's Report. That being said, however, if I have any concern it would be the Reports comparison of the States Career Service System to that employed by the Administrative Office of the Courts (AOC). In

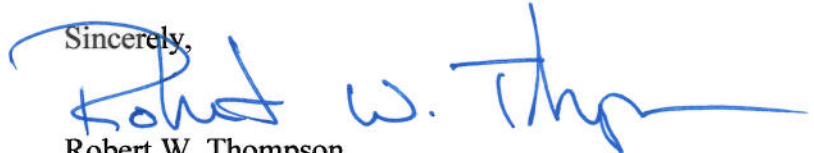
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<sup>1</sup>Fiscal year 2008-2009 is the last available data. The Career Service Review Offices Annual Report for Fiscal year 09-10 has not yet been completed. However, it is anticipated that there will be no significant rise in the number of employee grievances.

noting this concern I simply believe that with the legislatures recent changes to the States Grievance Procedures and DHRM's changes to rules concerning corrective actions and reductions-in-force the States Career Service System may well prove to be more efficient and effective than that employed by AOC. Indeed, under these statutory and rule changes it is very conceivable that the states system could provide more efficiency and savings than those illustrated and practiced at the AOC.

Other than this minor caution, the CSRO has no further comments regarding the report. It is well researched and accurately reflects the current state of the States Career Service System. As the CSRO is statutorily designed to enforce and protect the states "merit principles" it asserts no position on which direction the legislature should go. I do believe however, that the CSRO's institutional data and history can be a useful and appropriate resource to the legislature in its review and analysis of the states current Career Service System.

Sincerely,



Robert W. Thompson  
CSRO Administrator