

## **Part 11**

### **Personnel Rules and Benefits**

#### **10-3-1103 Sickness, disability and death benefits.**

- (1) The governing body of each municipality may maintain as to all elective or appointive officers and employees, including heads of departments, a system for the payment of health, dental, hospital, medical, disability and death benefits to be financed and administered in a manner and payable upon the terms and conditions as the governing body of the municipality may by ordinance or resolution prescribe.
- (2) The governing bodies of the municipalities may create and administer personnel benefit programs separately or jointly with other municipalities or other political subdivisions of the State of Utah or associations thereof.

Enacted by Chapter 48, 1977 General Session

#### **10-3-1104 Library personnel -- Monthly wage deductions and matching sums -- Time of inclusion.**

- (1) The librarians, assistants and employees of any public library may, at the discretion of the board of directors of the library, be included within and participate in the pension, retirement, sickness, disability and death benefit system established under Section 10-3-1103. In the event the librarian, assistants and employees of the municipality are included within and participate in the system, there shall be deducted from the monthly wage or salary of the librarian, assistants and employees and paid into the system, a percentage of their wage or salary equal to the percentage of the monthly wage or salary of other employees of the municipality which is paid into the system. Also there shall be paid monthly into the system from the funds of the library a further sum equal to the total amount deducted monthly from the wage or salary of the librarian, assistants and employees and paid into the retirement system.
- (2) Where the election by the board of directors of any library for inclusion of its librarian, assistants and employees within the system of any municipality is subsequent to the establishment of the system, the inclusion may begin as of the date of the establishment of the system or as of the date of the election as shall be determined by the board of directors. If inclusion is as of the date of the establishment of the system, there shall be paid into the system in addition to the subsequent monthly wage deductions and matching sums, a sum equal to the aggregate of monthly payroll deductions and matching sums that would have accrued during the period beginning with the establishment of the system and ending with the election had the librarian, assistants and employees been included within the system from its establishment.

Enacted by Chapter 48, 1977 General Session

#### **10-3-1105 Municipal employees -- Duration and termination of employment -- Exceptions.**

- (1)
  - (a) Except as provided in Subsection (1)(b) or (2), each employee of a municipality shall hold employment without limitation of time, being subject to discharge, suspension of over two days without pay, or involuntary transfer to a position with less remuneration only as provided in Section 10-3-1106.

- (b) Subsection (1)(a) does not apply to an employee who is discharged or involuntarily transferred to a position with less remuneration if the discharge or involuntary transfer is the result of a layoff or reorganization.
- (2) Subsection (1)(a) does not apply to:
  - (a) subject to Subsection (3), a person appointed by the mayor, city manager, or other person or body with the power to appoint in the municipality if:
    - (i) the appointment is made in writing;
    - (ii) the person's written job description identifies the person's position as exempt from the protections described in Subsection (1)(a); and
    - (iii) the position is described in an ordinance as exempt from the protections described in Subsection (1)(a);
  - (b) a member of the municipality's police department or fire department who is a member of the classified civil service in a first or second class city;
  - (c) a person who holds a position described in Subsections (2)(c)(i) through (xii) or an equivalent position designated in a municipal ordinance or personnel policy:
    - (i) a police chief of the municipality;
    - (ii) a deputy or assistant police chief of the municipality;
    - (iii) a fire chief of the municipality;
    - (iv) a deputy or assistant fire chief of the municipality;
    - (v) a head of a municipal department or division;
    - (vi) a deputy of a head of a municipal department or division;
    - (vii) a superintendent;
    - (viii) a probationary employee of the municipality;
    - (ix) a part-time employee of the municipality, including paid call firefighters;
    - (x) a seasonal or temporary employee of the municipality;
    - (xi) a person who works in the office of an elected official; or
    - (xii) a secretarial or administrative assistant support position that is specifically designated as a position to assist an elected official or the head or deputy head of a municipal department;
  - (d) an individual appointed to a position under Part 9, Appointed Officials and Their Duties, including:
    - (i) the city engineer;
    - (ii) the city recorder;
    - (iii) the city treasurer; or
    - (iv) the city attorney; or
  - (e) an employee who has:
    - (i) acknowledged in writing that the employee's employment status is appointed or at-will; or
    - (ii) voluntarily waived the procedures required by Section 10-3-1106.
- (3) In addition to the persons described in Subsections (2)(b) through (e), a municipality may appoint up to 5% of the municipality's workforce in accordance with Subsection (2)(a).
- (4) Nothing in this section or Section 10-3-1106 may be construed to limit a municipality's ability to define cause for an employee termination or reduction in force.

Amended by Chapter 321, 2012 General Session

**10-3-1106 Discharge, suspension without pay, or involuntary transfer -- Appeals -- Board -- Procedure.**

- (1) An employee to which Section 10-3-1105 applies may not be discharged, suspended without pay, or involuntarily transferred to a position with less remuneration:

- (a) because of the employee's politics or religious belief; or
  - (b) incident to, or through changes, either in the elective officers, governing body, or heads of departments.
- (2)
- (a) If an employee other than an employee described in Subsection 10-3-1105(2) is discharged, suspended for more than two days without pay, or involuntarily transferred from one position to another with less remuneration for any disciplinary reason, the employee may, subject to Subsection (2)(b), appeal the final decision to discharge, suspend without pay, or involuntarily transfer to an appeal board or hearing officer established under Subsection (7).
  - (b) If the municipality provides an internal grievance procedure, the employee shall exhaust the employee's rights under that grievance procedure before appealing to the appeal board or hearing officer.
- (3)
- (a) Each appeal under Subsection (2) shall be taken by filing written notice of the appeal with the municipal recorder in accordance with procedures established by a municipality within 10 calendar days after:
    - (i) if the municipality provides an internal grievance procedure, the employee receives notice of the final disposition of the municipality's internal grievance procedure; or
    - (ii) if the municipality does not provide an internal grievance procedure, the discharge, suspension, or involuntary transfer.
  - (b)
    - (i) Upon the filing of an appeal under Subsection (3)(a), the municipal recorder shall refer a copy of a properly filed appeal to the appeal board or hearing officer described in Subsection (7).
    - (ii) Upon receipt of the referral from the municipal recorder, the appeal board or hearing officer shall schedule a hearing to take and receive evidence and fully hear and determine the matter which relates to the reason for the discharge, suspension, or transfer.
- (4)
- (a) An employee who is the subject of the discharge, suspension, or transfer may:
    - (i) appear in person and be represented by counsel;
    - (ii) have a hearing open to the public;
    - (iii) confront the witness whose testimony is to be considered; and
    - (iv) examine the evidence to be considered by the appeal board.
  - (b) An employee or the municipality may request the hearing described in Subsection (4)(a)(ii).
- (5)
- (a)
    - (i) A decision of the appeal board shall be by secret ballot.
    - (ii) The appeal board or the hearing officer shall certify a decision by the appeal board or hearing officer, respectively, with the recorder no later than 15 days after the day on which the hearing is held, except as provided in Subsection (5)(a)(iii).
    - (iii) For good cause, the appeal board or hearing officer may extend the 15-day period under Subsection (5)(a)(ii) to a maximum of 60 calendar days, if the employee and municipality both consent.
  - (b) If the appeal board or hearing officer finds in favor of the employee, the appeal board or hearing officer shall provide that the employee shall receive:
    - (i) the employee's salary for the period of time during which the employee is discharged or suspended without pay less any amounts the employee earned from other employment during this period of time; or

- (ii) any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.
- (6)
- (a) A final action or order of the appeal board or hearing officer may be reviewed by the Court of Appeals by filing with that court a petition for review.
  - (b) A petition under Subsection (6)(a) shall be filed within 30 days after the issuance of the final action or order of the appeal board or hearing officer.
  - (c) The Court of Appeals' review shall be:
    - (i) on the record of the appeal board or hearing officer; and
    - (ii) for the purpose of determining if the appeal board or hearing officer abused its discretion or exceeded its authority.
- (7)
- (a) The method and manner of choosing a hearing officer or the members of the appeal board, the number of members, the designation of a hearing officer's or appeal board member's term of office, and the procedure for conducting an appeal and the standard of review shall be prescribed by the governing body of each municipality by ordinance.
  - (b) For a municipality operating under a form of government other than a council-mayor form under Chapter 3b, Part 2, Council-Mayor Form of Municipal Government, an ordinance adopted under Subsection (7)(a) may provide that the governing body of the municipality shall serve as the appeal board.
- (8) This section does not apply to an employee:
- (a) described in Subsection 10-3-1105(2); or
  - (b) discharged or transferred to a position with less remuneration if the discharge or transfer is the result of a layoff, reorganization, or other non-disciplinary reason.

Amended by Chapter 321, 2012 General Session

**10-3-1107 Cost of living adjustment -- Price index used.**

- (1) The governing body of each municipality may, in their discretion, adopt a plan to allow any person who qualifies under this part to receive a cost of living adjustment in that person's monthly retirement allowance. The adjustment allowed shall be a percentage, not to exceed 100%, of the sum as would restore the full purchasing power of each person's original unmodified pension allowance as it was in the calendar year in which the retirement giving rise to the pension occurred.
- (2) The amount necessary to restore the full purchasing power of the original unmodified pension allowance shall be computed from the consumers price index published by the United States Bureau of Labor Statistics.
- (3) Adjustments may be effective as of the date of this act or at any subsequent date set by the governing body. A municipality may choose to pay any per cent to the maximum amount provided that such percentage be paid to all qualified persons equally.

Amended by Chapter 4, 1993 General Session

**10-3-1108 Political activity of municipal officer or employee.**

- (1) For purposes of this section, "hours of employment" means occurring at a time when an officer or employee is acting within the course and scope of employment, but excludes a lunch break afforded to the officer or employee.
- (2) Except as otherwise provided by federal law:

- (a) the partisan political activity, political opinion, or political affiliation of an applicant for a position with a municipality may not provide a basis for denying employment to the applicant;
  - (b) an officer or employee's partisan political activity, political opinion, or political affiliation may not provide the basis for the officer or employee's employment, promotion, disciplinary action, demotion, or dismissal;
  - (c) a municipal officer or employee may not engage in political campaigning or solicit political contributions during hours of employment;
  - (d) a municipal officer or employee may not use municipal equipment while engaged in political activity;
  - (e) a municipal officer or employee may not directly or indirectly coerce, command, or advise another municipal officer or employee to pay, lend, or contribute part of the officer or employee's salary or compensation, or anything else of value to a political party, committee, organization, agency, or person for political purposes; and
  - (f) a municipal officer or employee may not attempt to make another officer or employee's personnel status dependent on the officer or employee's support or lack of support of a political party, affiliation, opinion, committee, organization, agency, or person engaged in political activity.
- (3) A municipal employee who has filed a declaration of candidacy may:
- (a) be given a leave of absence for the period between the primary election and the general election; and
  - (b) use any vacation or other leave available to engage in campaign activities.
- (4) If a municipal officer or employee is elected to a public office, the employee may:
- (a) be given a leave of absence without pay for the time during which the employee receives compensation for service in the public office; and
  - (b) use any vacation or other leave available to serve in the public office.
- (5) Neither the filing of a declaration of candidacy nor a leave of absence under this section may be used as the basis for an adverse employment action, including discipline and termination, against the employee.
- (6) Nothing in this section may be construed to:
- (a) prohibit a municipal officer or employee's voluntary contribution to a party or candidate of the officer or employee's choice; or
  - (b) permit a municipal officer or employee's partisan political activity that is prohibited under federal law.

Enacted by Chapter 79, 2000 General Session

**10-3-1109 Compliance with Labor Code requirements.**

Each municipality shall comply with the requirements of Section 34-32-1.1.

Enacted by Chapter 284, 2003 General Session

**10-3-1110 Exemption from state licensure by Division of Real Estate.**

In accordance with Section 61-2f-202, an employee of a municipality is exempt from licensure under Title 61, Chapter 2f, Real Estate Licensing and Practices Act:

- (1) when engaging in an act on behalf of the municipality in accordance with:
  - (a) this title; or
  - (b) Title 11, Cities, Counties, and Local Taxing Units; and
- (2) if the act described in Subsection (1) is related to one or more of the following:

- (a) acquiring real estate, including by eminent domain;
- (b) disposing of real estate;
- (c) providing services that constitute property management, as defined in Section 61-2f-102; or
- (d) leasing real estate.

Amended by Chapter 379, 2010 General Session