

1 **DIVISION OF HUMAN RESOURCE MANAGEMENT**

2 **AMENDMENTS**

3 2024 GENERAL SESSION

4 STATE OF UTAH

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5  
6 **LONG TITLE**

7 **General Description:**

8 This bill modifies provisions of the Utah State Personnel Management Act.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ provides that the director of the Division of Human Resource Management
- 12 (DHRM) is the chief human resources officer for the state executive branch;
- 13 ▶ eliminates the requirement that the director of DHRM provide charter schools and
- 14 political subdivisions with training and advice on human resource management;
- 15 ▶ for purposes of the state's pay for performance policy, provides that an employee
- 16 does not include an individual who is ineligible to receive a state retirement benefit
- 17 or who is in a time-limited position lasting less than 12 months;
- 18 ▶ clarifies the purpose of the state's pay for performance policy;
- 19 ▶ permits an agency to file a request with DHRM:
  - 20 • to keep a competitive career service position scheduled as a competitive career
  - 21 service position; or
  - 22 • to reschedule a non-competitive career service position as a competitive career
  - 23 service position;
- 24 ▶ clarifies the process for an agency's demotion or dismissal of a career service
- 25 employee;
- 26 ▶ clarifies language regarding compensation for overtime and an employee's regular
- 27 hourly wage; and
- 28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **63A-17-102**, as last amended by Laws of Utah 2022, Chapter 209

36 **63A-17-105**, as renumbered and amended by Laws of Utah 2021, Chapter 344

37 **63A-17-106**, as last amended by Laws of Utah 2022, Chapters 166, 169, 177, and 209

38 **63A-17-112**, as enacted by Laws of Utah 2022, Chapter 209

39 **63A-17-301**, as last amended by Laws of Utah 2022, Chapter 209

40 **63A-17-304**, as last amended by Laws of Utah 2022, Chapter 169

41 **63A-17-306**, as last amended by Laws of Utah 2022, Chapter 169

42 **63A-17-502**, as last amended by Laws of Utah 2022, Chapter 447

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44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **63A-17-102** is amended to read:

46 **63A-17-102. Definitions.**

47 As used in this chapter:

48 (1) "Agency" means any department or unit of Utah state government with authority to  
49 employ personnel.

50 (2) "Career service" means positions under schedule B as defined in Section  
51 63A-17-301.

52 (3) "Career service employee" means an employee who has successfully completed a  
53 probationary period of service in a position covered by the career service.

54 (4) "Career service status" means status granted to employees who successfully  
55 complete probationary periods for competitive career service positions.

56 (5) "Classified service" means those positions subject to the classification and  
57 compensation provisions of Section 63A-17-307.

58 (6) "Controlled substance" means controlled substance as defined in Section 58-37-2.

59 (7) (a) "Demotion" means a disciplinary action resulting in a reduction of an  
60 employee's current actual wage.

61 (b) "Demotion" does not mean:

62 (i) a nondisciplinary movement of an employee to another position without a reduction

63 in the current actual wage; or

64 (ii) a reclassification of an employee's position under the provisions of Subsection  
65 63A-17-307(3) and rules made by the department.

66 (8) "Director" means the director of the division.

67 (9) "Disability" means a physical or mental disability as defined and protected under  
68 the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.

69 (10) "Division" means the Division of Human Resource Management, created in  
70 Section 63A-17-105.

71 (11) "Employee" means any individual in a paid status covered by the career service or  
72 classified service provisions of this chapter.

73 (12) "Examining instruments" means written or other types of proficiency tests.

74 (13) "Human resource function" means those duties and responsibilities specified:

75 (a) under Section 63A-17-106;

76 (b) under rules of the division; and

77 (c) under other state or federal statute.

78 (14) "Market comparability adjustment" means a salary range adjustment determined  
79 necessary through a market survey of salary data and other relevant information.

80 (15) "Probationary employee" means an employee serving a probationary period in a  
81 career service position but who does not have career service status.

82 (16) "Probationary period" means that period of time determined by the division that an  
83 employee serves in a career service position as part of the hiring process before career service  
84 status is granted to the employee.

85 (17) "Probationary status" means the status of an employee between the employee's  
86 hiring and the granting of career service status.

87 (18) "Structure adjustment" means a division modification of salary ranges.

88 (19) "Temporary employee" means a career service exempt [~~employees~~] employee  
89 described in Subsection 63A-17-301(1)(r).

90 (20) "Total compensation" means salaries and wages, bonuses, paid leave, group  
91 insurance plans, retirement, and all other benefits offered to state employees as inducements to  
92 work for the state.

93 Section 2. Section **63A-17-105** is amended to read:

94           **63A-17-105. Division of Human Resource Management created -- Director --**  
 95 **Chief Human Resources Officer -- Staff.**

96           (1) There is created within the department, the Division of Human Resource  
 97 Management.

98           (2) ~~[(a)]~~ The division shall be administered by a director appointed by the executive  
 99 director, with the approval of the governor.

100           ~~[(b)]~~ (3) The director shall:

101           (a) be a person with experience in human resource management ~~[and shall be]~~;

102           (b) be accountable to the executive director for the director's performance in office[-];

103           (c) serve as the chief human resource officer for the state executive branch; and

104           ~~[(3)]~~ (d) ~~[The director shall]~~ advise the governor on human resource matters and  
 105 policies.

106           Section 3. Section **63A-17-106** is amended to read:

107           **63A-17-106. Responsibilities of the director.**

108           (1) As used in this section, "miscarriage" means the spontaneous or accidental loss of a  
 109 fetus, regardless of gestational age or the duration of the pregnancy.

110           (2) The director shall have full responsibility and accountability for the administration  
 111 of the statewide human resource management system.

112           (3) Except as provided in Section 63A-17-201, an agency may not perform human  
 113 resource functions without the consent of the director.

114           (4) Statewide human resource management rules made by the division in accordance  
 115 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall take precedence if there  
 116 is a conflict with agency rules, policies, or practices.

117           (5) The division may operate as an internal service fund agency in accordance with  
 118 Section 63J-1-410 for the human resource functions the division provides.

119           (6) The director shall:

120           (a) develop, implement, and administer a statewide program of human resource  
 121 management that will:

122           (i) aid in the efficient execution of public policy;

123           (ii) foster careers in public service for qualified employees; and

124           (iii) render assistance to state agencies in performing their missions;

- 125 (b) design and administer the state pay plan;
- 126 (c) design and administer the state classification system and procedures for determining  
127 schedule assignments;
- 128 (d) design and administer the state recruitment and selection system;
- 129 (e) administer agency human resource practices and ensure compliance with federal  
130 law, state law, and state human resource rules, including equal employment opportunity;
- 131 (f) consult with agencies on decisions concerning employee corrective action and  
132 discipline;
- 133 (g) maintain central personnel records;
- 134 (h) perform those functions necessary to implement this chapter unless otherwise  
135 assigned or prohibited;
- 136 (i) perform duties assigned by the governor, executive director, or statute;
- 137 (j) make rules for human resource management, in accordance with Title 63G, Chapter  
138 3, Utah Administrative Rulemaking Act;
- 139 (k) establish and maintain a management information system that will furnish the  
140 governor, the Legislature, and agencies with current information on authorized positions,  
141 payroll, and related matters concerning state human resources;
- 142 (l) conduct research and planning activities to:
- 143 (i) determine and prepare for future state human resource needs;
- 144 (ii) develop methods for improving public human resource management; and
- 145 (iii) propose needed policy changes to the governor;
- 146 (m) study the character, causes, and extent of discrimination in state employment and  
147 develop plans for its elimination through programs consistent with federal and state laws  
148 governing equal employment opportunity in employment;
- 149 ~~[(n) when requested by charter schools or counties, municipalities, and other political~~  
150 ~~subdivisions of the state, provide technical service, training recommendations, or advice on~~  
151 ~~human resource management at a charge determined by the director;]~~
- 152 ~~[(o)]~~ (n) establish compensation policies and procedures for early voluntary retirement;
- 153 ~~[(p)]~~ (o) confer with the heads of other agencies about human resource policies and  
154 procedures;
- 155 ~~[(q)]~~ (p) submit an annual report to the executive director, the governor, and the

156 Legislature; and

157           [~~(r)~~] (q) assist with the development of a vacant position report required under  
158 Subsection 63J-1-201(2)(b)(vi).

159           (7) (a) After consultation with the executive director, the governor, and the heads of  
160 other agencies, the director shall establish and coordinate statewide training programs,  
161 including training described in Subsection (7)(e).

162           (b) The programs developed under this Subsection (7) shall have application to more  
163 than one agency.

164           (c) The division may not establish training programs that train employees to perform  
165 highly specialized or technical jobs and tasks.

166           (d) The division shall ensure that any training program described in this Subsection (7)  
167 complies with Title 63G, Chapter 22, State Training and Certification Requirements.

168           (e) (i) As used in this Subsection (7)(e):

169           (A) "Employee" means the same as that term is defined in Section 63A-17-112.

170           (B) "Supervisor" means an individual in a position at an agency, as defined in Section  
171 63A-17-112, that requires the regular supervision and performance evaluation of an employee.

172           (ii) A supervisor shall attend the training:

173           (A) within six months of being promoted or hired to the position of supervisor; and

174           (B) at least annually.

175           (iii) [~~Training attendance and the~~] A supervisor's completion of training and effective  
176 use of training information and principles shall be considered in an evaluation of [~~a~~] the  
177 supervisor's job performance.

178           (iv) The training shall include:

179           (A) effective employee management and evaluation methods based on the pay for  
180 performance management system described in Section 63A-17-112;

181           (B) instruction to improve supervisor and employee communications;

182           (C) best practices for recognizing and retaining high-performing employees;

183           (D) best practices for addressing poor-performing employees; and

184           (E) any other information and principles identified by the division to improve  
185 management or organizational effectiveness.

186           (8) (a) (i) The division may collect fees for training as authorized by this Subsection

187 (8).

188 (ii) Training funded from General Fund appropriations shall be treated as a separate  
189 program within the department budget.

190 (iii) All money received from fees under this section will be accounted for by the  
191 department as a separate user driven training program.

192 (iv) The user training program includes the costs of developing, procuring, and  
193 presenting training and development programs, and other associated costs for these programs.

194 (b) (i) Funds remaining at the end of the fiscal year in the user training program are  
195 nonlapsing.

196 (ii) Each year, as part of the appropriations process, the Legislature shall review the  
197 amount of nonlapsing funds remaining at the end of the fiscal year and may, by statute, require  
198 the department to lapse a portion of the funds.

199 (9) Rules described in Subsection (6)(j) shall provide for at least three work days of  
200 paid bereavement leave for an employee:

201 (a) following the end of the employee's pregnancy by way of miscarriage or stillbirth;  
202 or

203 (b) following the end of another individual's pregnancy by way of a miscarriage or  
204 stillbirth, if:

205 (i) the employee is the individual's spouse or partner;

206 (ii) (A) the employee is the individual's former spouse or partner; and

207 (B) the employee would have been a biological parent of a child born as a result of the  
208 pregnancy;

209 (iii) the employee provides documentation to show that the individual intended for the  
210 employee to be an adoptive parent, as that term is defined in Section 78B-6-103, of a child born  
211 as a result of the pregnancy; or

212 (iv) under a valid gestational agreement in accordance with Title 78B, Chapter 15, Part  
213 8, Gestational Agreement, the employee would have been a parent of a child born as a result of  
214 the pregnancy.

215 Section 4. Section **63A-17-112** is amended to read:

216 **63A-17-112. Pay for performance management system -- Employees paid for**  
217 **performance.**

218 (1) As used in this section:

219 (a) (i) "Agency" means, except as provided in Subsection (1)(a)(ii), the same as that  
220 term is defined in Section 63A-17-102.

221 (ii) "Agency" does not include the State Board of Education, the Office of the State  
222 Treasurer, Office of the State Auditor, Office of the State Attorney General, Utah System of  
223 Higher Education, the Legislature, the judiciary, or, as defined in Section 63E-1-102, an  
224 independent entity.

225 (b) (i) "Employee" means an employee of an agency.

226 (ii) "Employee" does not include:

227 (A) [an individual in a schedule AB, as described in Section 63A-17-301, position:] an  
228 individual in a schedule AB position, as described in Section 63A-17-301;

229 (B) an individual in a position that is not eligible to receive a retirement benefit under  
230 Title 49, Utah State Retirement and Insurance Benefit Act; or

231 (C) an individual that an agency hires for a time-limited position that will last fewer  
232 than 12 consecutive months.

233 (c) "Pay for performance" means a plan for incentivizing an employee [~~for meeting or~~  
234 ~~exceeding~~] to meet or exceed production or performance goals, in which the plan is  
235 well-defined before work begins, [~~eligible work groups are defined,~~] specific goals and targets  
236 for the employee are determined, and measurement procedures are in place[~~, and specific~~  
237 ~~incentives are provided when goals and targets are met~~].

238 (d) "Pay for performance management system" means the system described in  
239 Subsection (2).

240 (2) The division shall establish and, in accordance with Title 63G, Chapter 3, Utah  
241 Administrative Rulemaking Act, make rules for the administration of a pay for performance  
242 management system.

243 (3) The pay for performance management system shall include:

244 (a) guidelines and criteria for an agency to adopt pay for performance policies and  
245 administer pay based on an employee's performance in furtherance of the agency's mission;

246 (b) employee performance ratings;

247 (c) requirements for written employee performance standards and expectations;

248 (d) supervisor verbal and written feedback based on the standards of performance and



- 249 behavior outlined in an employee's performance plan; and
- 250 (e) quarterly written evaluation of an employee's performance.
- 251 (4) In consultation with the division, no later than July 1, 2023, each agency shall:
- 252 (a) adopt pay for performance policies based on the performance management system;
- 253 and
- 254 (b) subject to available funds and as necessary, adjust an employee's wage to reflect:
- 255 (i) subject to Subsection (5), for a classified service employee, the salary range of the
- 256 position classified plan for the employee's position; and
- 257 (ii) an increase, decrease, or no change in the employee's wage:
- 258 (A) commensurate to an employee's performance as reflected by the employee's
- 259 evaluation conducted in accordance with the pay for performance management system; and
- 260 (B) in an amount that is in accordance with the guidelines and criteria established for a
- 261 wage change in the pay for performance management system.
- 262 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 263 division shall make rules authorizing a classified service employee to receive a wage that
- 264 exceeds the salary range of the classified service employee's position classified plan if
- 265 warranted based on the classified employee's performance rating.

266 Section 5. Section **63A-17-301** is amended to read:

267 **63A-17-301. Career service -- Exempt positions -- Schedules for civil service**

268 **positions -- Coverage of career service provisions.**

- 269 (1) Except as provided in Subsection (3)(d), the following positions are exempt from
- 270 the career service provisions of this chapter and are designated under the following schedules:
- 271 (a) schedule AA includes the governor, members of the Legislature, and all other
- 272 elected state officers;
- 273 (b) schedule AB includes appointed executives and board or commission executives
- 274 enumerated in Section 67-22-2;
- 275 (c) schedule AC includes all employees and officers in:
- 276 (i) the office and at the residence of the governor;
- 277 (ii) the Public Lands Policy Coordinating Office;
- 278 (iii) the Office of the State Auditor; and
- 279 (iv) the Office of the State Treasurer;

- 280 (d) schedule AD includes employees who:
- 281 (i) are in a confidential relationship to an agency head or commissioner; and
- 282 (ii) report directly to, and are supervised by, a department head, commissioner, or
- 283 deputy director of an agency or its equivalent;
- 284 (e) schedule AE includes each employee of the State Board of Education that the State
- 285 Board of Education designates as exempt from the career service provisions of this chapter;
- 286 (f) schedule AG includes employees in the Office of the Attorney General who are
- 287 under their own career service pay plan under Sections 67-5-7 through 67-5-13;
- 288 (g) schedule AH includes:
- 289 (i) teaching staff of all state institutions; and
- 290 (ii) employees of the Utah Schools for the Deaf and the Blind who are:
- 291 (A) educational interpreters as classified by the division; or
- 292 (B) educators as defined by Section 53E-8-102;
- 293 (h) schedule AN includes employees of the Legislature;
- 294 (i) schedule AO includes employees of the judiciary;
- 295 (j) schedule AP includes all judges in the judiciary;
- 296 (k) schedule AQ includes:
- 297 (i) members of state and local boards and councils appointed by the governor and
- 298 governing bodies of agencies;
- 299 (ii) a water commissioner appointed under Section 73-5-1;
- 300 (iii) other local officials serving in an ex officio capacity; and
- 301 (iv) officers, faculty, and other employees of state universities and other state
- 302 institutions of higher education;
- 303 (l) schedule AR includes employees in positions that involve responsibility:
- 304 (i) for determining policy;
- 305 (ii) for determining the way in which a policy is carried out; or
- 306 (iii) of a type not appropriate for career service, as determined by the agency head with
- 307 the concurrence of the director;
- 308 (m) schedule AS includes any other employee:
- 309 (i) whose appointment is required by statute to be career service exempt;
- 310 (ii) whose agency is not subject to this chapter; or

311 (iii) whose agency has authority to make rules regarding the performance,  
312 compensation, and bonuses for its employees;

313 (n) schedule AT includes employees of the Division of Technology Services,  
314 designated as executive/professional positions by the director of the Division of Technology  
315 Services with the concurrence of the director of the division;

316 (o) schedule AU includes patients and inmates employed in state institutions;

317 (p) employees of the Department of Workforce Services, designated as schedule AW:  
318 (i) who are temporary employees that are federally funded and are required to work  
319 under federally qualified merit principles as certified by the director; or

320 (ii) for whom substantially all of their work is repetitive, measurable, or transaction  
321 based, and who voluntarily apply for and are accepted by the Department of Workforce  
322 Services to work in a pay for performance program designed by the Department of Workforce  
323 Services with the concurrence of the director of the division;

324 (q) subject to Subsection (6), schedule AX includes employees in positions that:  
325 (i) require the regular supervision and performance evaluation of one or more other  
326 employees; and

327 (ii) are not designated exempt from career service under any other schedule described  
328 in this Subsection (1); and

329 (r) for employees in positions that are temporary, seasonal, time limited, funding  
330 limited, or variable hour in nature, under schedule codes and parameters established by the  
331 division by administrative rule.

332 (2) The civil service shall consist of two schedules as follows:

333 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).  
334 (ii) Removal from any appointive position under schedule A, unless otherwise  
335 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

336 (b) Schedule B is the competitive career service schedule, consisting of:  
337 (i) all positions filled through competitive selection procedures as defined by the  
338 director; or

339 (ii) positions filled through a division approved on-the-job examination intended to  
340 appoint a qualified person with a disability, or a veteran in accordance with Title 71A, Chapter  
341 2, Veterans Preference.

342 (3) (a) The director, after consultation with the heads of concerned executive branch  
343 departments and agencies and with the approval of the governor, shall allocate positions to the  
344 appropriate schedules under this section.

345 (b) Agency heads shall make requests and obtain approval from the director before  
346 changing the schedule assignment and tenure rights of any position.

347 (c) Unless the director's decision is reversed by the governor, when the director denies  
348 an agency's request, the director's decision is final.

349 (d) (i) An agency may file [~~with the division a request~~] a request with the division:

350 (A) to keep a position scheduled as a schedule B position as a schedule B position; or

351 (B) to reschedule a position that [~~would otherwise be~~] is scheduled as a schedule A  
352 position as a schedule B position.

353 (ii) The division shall review a request filed under Subsection (3)(d)(i) and approve the  
354 request only if the exception is necessary to conform to a requirement imposed as a condition  
355 precedent to receipt of federal funds or grant of a tax benefit under federal law.

356 (4) (a) Compensation for employees of the Legislature shall be established by the  
357 directors of the legislative offices in accordance with Section 36-12-7.

358 (b) Compensation for employees of the judiciary shall be established by the state court  
359 administrator in accordance with Section 78A-2-107.

360 (c) Compensation for officers, faculty, and other employees of state universities and  
361 institutions of higher education shall be established as provided in Title 53B, Chapter 1,  
362 Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of  
363 Higher Education.

364 (d) Unless otherwise provided by law, compensation for all other schedule A  
365 employees shall be established by their appointing authorities, within ranges approved by, and  
366 after consultation with the director.

367 (5) An employee who is in a position designated schedule AC and who holds career  
368 service status on June 30, 2010, shall retain the career service status if the employee:

369 (a) remains in the position that the employee is in on June 30, 2010; and

370 (b) does not elect to convert to career service exempt status in accordance with a rule  
371 made by the division.

372 (6) (a) An employee who is hired for a schedule AX position on or after July 1, 2022,

373 is exempt from career service status.

374 (b) An employee who before July 1, 2022, is a career service employee employed in a  
375 schedule B position that is rescheduled to a schedule AX position on July 1, 2022, shall  
376 maintain the employee's career service status for the duration of the employee's employment in  
377 the same position unless the employee voluntarily converts to career service exempt status  
378 before July 1, 2023.

379 (c) (i) Subject to Subsection (6)(c)(ii), an employee is exempt from career service  
380 status if:

381 (A) before July 1, 2022, the employee was a probationary employee in a schedule B  
382 position and had not completed the probationary period; and

383 (B) on July 1, 2022, the schedule B position in which the probationary employee is  
384 employed is rescheduled as a scheduled AX position.

385 (ii) An employee described in Subsection (6)(c)(i):

386 (A) is not a probationary employee on or after July 1, 2022; and

387 (B) is exempt from career service status on and after July 1, 2022, unless the employee  
388 changes employment to a schedule B position.

389 (d) The division shall disseminate to each employee described in Subsection (6)(b)  
390 information on financial and other incentives for voluntary conversion to career-service exempt  
391 status.

392 (e) An agency, as defined in Section 63A-17-112, may adopt a policy, created in  
393 consultation with the division, for agency review of recommendations that schedule AX  
394 employees be suspended, demoted, or dismissed from employment.

395 Section 6. Section **63A-17-304** is amended to read:

396 **63A-17-304. Promotion -- Reclassification -- Market adjustment.**

397 (1) (a) If an employee is promoted or the employee's position is reclassified to a higher  
398 salary range maximum, the agency shall place the [~~employee~~] employee's salary within the new  
399 range of the position.

400 (b) An agency may not set an employee's salary:

401 (i) higher than the maximum in the new salary range; or

402 (ii) lower than the minimum in the new salary range of the position.

403 (2) An agency shall adjust the salary range for an employee whose salary range is

404 approved by the Legislature for a market comparability adjustment consistent with Subsection  
405 63A-17-307(5)(b)(i):

406 (a) at the beginning of the next fiscal year; and

407 (b) consistent with appropriations made by the Legislature.

408 (3) Division-initiated revisions in the state classification system that result in  
409 consolidation or reduction of class titles or broadening of pay ranges:

410 (a) may not be regarded as a reclassification of the position or promotion of the  
411 employee; and

412 (b) are exempt from the provisions of Subsection (1).

413 Section 7. Section **63A-17-306** is amended to read:

414 **63A-17-306. Dismissals and demotions -- Grounds -- Disciplinary action --**

415 **Procedure -- Reductions in force.**

416 (1) A career service employee may be dismissed or demoted:

417 (a) to advance the good of the public service; or

418 (b) for just [~~causes~~] cause, including inefficiency, incompetency, failure to maintain  
419 skills or adequate performance levels, insubordination, disloyalty to the orders of a superior,  
420 misfeasance, malfeasance, or nonfeasance in office.

421 (2) An employee may not be dismissed because of race, sex, age, disability, national  
422 origin, religion, political affiliation, or other nonmerit factor including the exercise of rights  
423 under this chapter.

424 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
425 director shall make rules governing the procedural and documentary requirements of  
426 disciplinary dismissals and demotions.

427 (4) If an agency head finds that a career service employee is charged with aggravated  
428 misconduct or that retention of a career service employee would endanger the peace and safety  
429 of others or pose a grave threat to the public interest, the employee may be suspended pending  
430 the administrative appeal to the department head as provided in Subsection (5).

431 (5) [~~(a) A~~] An agency head may not demote or dismiss a career service employee  
432 unless:~~[may not be demoted or dismissed unless the department head or designated~~  
433 ~~representative has complied with this subsection.]~~

434 [~~(b)~~] (a) [~~The department~~] the agency head or the designated representative of the

435 agency head notifies the employee in writing of the [~~reasons~~] reason for the dismissal or  
436 demotion[-];

437 ~~[(e)]~~ (b) [~~The~~] the employee [~~has no less than~~] is given five working days to submit a  
438 written reply to the agency head and to have the reply considered by the [~~department~~] agency  
439 head[-];

440 ~~[(d)]~~ (c) [~~The~~] the employee [~~has an~~] is given an opportunity to be heard by the  
441 [~~department~~] agency head or the designated representative of the agency head[-] and

442 ~~[(e)]~~ (d) [~~Following the hearing, the employee may be dismissed or demoted if the~~  
443 ~~department~~] after completing the procedural requirements described in Subsections (5)(a)  
444 through (c), the agency head finds adequate cause or reason[-] to demote or dismiss the  
445 employee.

446 (6) (a) Reductions in force required by inadequate funds, change of workload, or lack  
447 of work are governed by retention points established by the director.

448 (b) Under those circumstances:

449 (i) The agency head shall designate the category of work to be eliminated, subject to  
450 review by the director.

451 (ii) Temporary and probationary employees shall be separated before any career service  
452 employee.

453 (iii) (A) When more than one career service employee is affected, the employees shall  
454 be separated in the order of their retention points, the employee with the lowest points to be  
455 discharged first.

456 (B) Retention points for each career service employee shall be computed according to  
457 rules established by the director, allowing appropriate consideration for proficiency and  
458 seniority in state government, including any active duty military service fulfilled subsequent to  
459 original state appointment.

460 (c) (i) A career service employee who is separated in a reduction in force under this  
461 section shall be given preferential consideration when applying for a career service position.

462 (ii) Preferential consideration under Subsection (6)(c)(i) applies only until the former  
463 career service employee accepts a career service position.

464 (iii) The director shall make rules in accordance with Title 63G, Chapter 3, Utah  
465 Administrative Rulemaking Act, concerning the manner of granting preferential consideration

466 under Subsection (6)(c)(i).

467 (d) (i) An employee separated due to a reduction in force may appeal to the department  
468 head for an administrative review.

469 (ii) The notice of appeal must be submitted within 20 working days after the  
470 employee's receipt of written notification of separation.

471 (iii) The employee may appeal the decision of the department head according to the  
472 grievance and appeals procedure of this chapter and Title 67, Chapter 19a, Grievance  
473 Procedures.

474 Section 8. Section **63A-17-502** is amended to read:

475 **63A-17-502. Overtime policies for state employees.**

476 (1) As used in this section:

477 (a) "Accrued overtime hours" means:

478 (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end  
479 of the fiscal year, have not been paid and have not been taken as time off by the nonexempt  
480 state employee who accrued them; and

481 (ii) for exempt employees, overtime hours earned during an overtime year.

482 (b) "Appointed official" means:

483 (i) each department executive director and deputy director, each division director, and  
484 each member of a board or commission; and

485 (ii) any other person employed by a department who is appointed by, or whose  
486 appointment is required by law to be approved by, the governor and who:

487 (A) is paid a salary by the state; and

488 (B) who exercises managerial, policy-making, or advisory responsibility.

489 (c) "Department" means the Department of Government Operations, the Department of  
490 Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage  
491 Services, the Insurance Department, the Public Service Commission, the Labor Commission,  
492 the Department of Agriculture and Food, the Department of Human Services, the Department  
493 of Natural Resources, the Department of Transportation, the Department of Commerce, the  
494 Department of Workforce Services, the State Tax Commission, the Department of Cultural and  
495 Community Engagement, the Department of Health, the National Guard, the Department of  
496 Environmental Quality, the Department of Public Safety, the Commission on Criminal and



497 Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General,  
498 merit employees in the Office of the State Treasurer, merit employees in the Office of the State  
499 Auditor, Department of Veterans and Military Affairs, and the Board of Pardons and Parole.

500 (d) "Elected official" means any person who is an employee of the state because the  
501 person was elected by the registered voters of Utah to a position in state government.

502 (e) "Exempt employee" means a state employee who is exempt as defined by the Fair  
503 Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

504 (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

505 (g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards  
506 Act of 1978, 29 U.S.C. Sec. 201 et seq., by which a nonexempt employee elects the form of  
507 compensation the nonexempt employee will receive for overtime.

508 (h) "Nonexempt employee" means a state employee who is nonexempt as defined by  
509 the division applying FLSA requirements.

510 (i) "Overtime" means actual time worked in excess of the employee's defined work  
511 period.

512 (j) "Overtime year" means the year determined by a department under Subsection  
513 (4)(b) at the end of which an exempt employee's accrued overtime lapses.

514 (k) "State employee" means every person employed by a department who is not:

515 (i) an appointed official;

516 (ii) an elected official; or

517 (iii) a member of a board or commission who is paid only for per diem or travel  
518 expenses.

519 (l) "Uniform annual date" means the date when an exempt employee's accrued  
520 overtime lapses.

521 (m) "Work period" means:

522 (i) for all nonexempt employees, except law enforcement and hospital employees, a  
523 consecutive seven day 24 hour work period of 40 hours;

524 (ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and

525 (iii) for nonexempt law enforcement and hospital employees, the period established by  
526 each department by rule for those employees according to the requirements of the Fair Labor  
527 Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

528 (2) Each department shall compensate each state employee who works overtime by  
529 complying with the requirements of this section.

530 (3) (a) Each department shall negotiate and obtain a signed FLSA agreement from each  
531 nonexempt employee.

532 (b) In the FLSA agreement, the nonexempt employee shall elect either to be  
533 compensated for overtime by:

534 (i) taking time off work at the rate of one and one-half hour off for each overtime hour  
535 worked; or

536 (ii) being paid for the overtime worked at the rate of one and one-half times [~~the rate~~  
537 ~~per hour that the state employee receives for nonovertime work~~] the employee's regular hourly  
538 wage.

539 (c) Any nonexempt employee who elects to take time off under this Subsection (3)  
540 shall be paid for any overtime worked in excess of the cap established by the division.

541 (d) Before working any overtime, each nonexempt employee shall obtain authorization  
542 to work overtime from the employee's immediate supervisor.

543 (e) Each department shall:

544 (i) for employees who elect to be compensated with time off for overtime, allow  
545 overtime earned during a fiscal year to be accumulated; and

546 (ii) for employees who elect to be paid for overtime worked, pay them for overtime  
547 worked in the paycheck for the pay period in which the employee worked the overtime.

548 (f) If a department pays a nonexempt employee for overtime, that department shall  
549 charge that payment to that department's budget.

550 (g) At the end of each fiscal year, the Division of Finance shall total all the accrued  
551 overtime hours for nonexempt employees and charge that total against the appropriate fund or  
552 subfund.

553 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each department shall  
554 compensate exempt employees who work overtime by granting them time off at the rate of one  
555 hour off for each hour of overtime worked.

556 (ii) The director of the division may grant limited exceptions to [~~this requirement~~] the  
557 compensation requirement described in Subsection (4)(a)(i), where work circumstances dictate,  
558 by authorizing a department to pay [~~employees~~] an exempt employee for overtime worked at

559 the [~~rate per hour that the employee receives for nonovertime work,~~] employee's regular hourly  
560 wage if that department has funds available.

561 (b) (i) Each department shall:

562 (A) establish in its written human resource policies a uniform annual date for each  
563 division that is at the end of any pay period; and

564 (B) communicate the uniform annual date to its employees.

565 (ii) If any department fails to establish a uniform annual date as required by this  
566 Subsection (4), the director of the division, in conjunction with the director of the Division of  
567 Finance, shall establish the date for that department.

568 (c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a  
569 benefit, and is not a vested right.

570 (ii) A court may not construe the overtime for exempt employees authorized by this  
571 Subsection (4) as an entitlement, a benefit, or as a vested right.

572 (d) At the end of the overtime year, upon transfer to another department at any time,  
573 and upon termination, retirement, or other situations where the employee will not return to  
574 work before the end of the overtime year:

575 (i) any of an exempt employee's overtime that is more than the maximum established  
576 by division rule lapses; and

577 (ii) unless authorized by the director of the division under Subsection (4)(a)(ii), a  
578 department may not compensate the exempt employee for that lapsed overtime by paying the  
579 employee for the overtime or by granting the employee time off for the lapsed overtime.

580 (e) Before working any overtime, each exempt employee shall obtain authorization to  
581 work overtime from the exempt employee's immediate supervisor.

582 (f) If a department pays an exempt employee for overtime under authorization from the  
583 director of the division, that department shall charge that payment to that department's budget  
584 in the pay period earned.

585 (5) The division shall:

586 (a) ensure that the provisions of the FLSA and this section are implemented throughout  
587 state government;

588 (b) determine, for each state employee, whether that employee is exempt, nonexempt,  
589 law enforcement, or has some other status under the FLSA;

590 (c) in coordination with modifications to the systems operated by the Division of  
591 Finance, make rules:

592 (i) establishing procedures for recording overtime worked that comply with FLSA  
593 requirements;

594 (ii) establishing requirements governing overtime worked while traveling and  
595 procedures for recording that overtime that comply with FLSA requirements;

596 (iii) establishing requirements governing overtime worked if the employee is "on call"  
597 and procedures for recording that overtime that comply with FLSA requirements;

598 (iv) establishing requirements governing overtime worked while an employee is being  
599 trained and procedures for recording that overtime that comply with FLSA requirements;

600 (v) subject to the FLSA, establishing the maximum number of hours that a nonexempt  
601 employee may accrue before a department is required to pay the employee for the overtime  
602 worked;

603 (vi) subject to the FLSA, establishing the maximum number of overtime hours for an  
604 exempt employee that do not lapse; and

605 (vii) establishing procedures for adjudicating appeals of any FLSA determinations  
606 made by the division as required by this section;

607 (d) monitor departments for compliance with the FLSA; and

608 (e) recommend to the Legislature and the governor any statutory changes necessary  
609 because of federal government action.

610 (6) (a) In coordination with the procedures for recording overtime worked established  
611 in rule by the division, the Division of Finance shall modify its payroll and human resource  
612 systems to accommodate those procedures.

613 (b) Notwithstanding the procedures and requirements of Title 63G, Chapter 4,  
614 Administrative Procedures Act, Section 63A-17-602, and Section 67-19a-301, any employee  
615 who is aggrieved by the FLSA designation made by the division as required by this section may  
616 appeal that determination to the director of the division by following the procedures and  
617 requirements established in division rule.

618 (c) Upon receipt of an appeal under this section, the director shall notify the executive  
619 director of the employee's department that the appeal has been filed.

620 (d) If the employee is aggrieved by the decision of the director, the employee shall

621 appeal that determination to the Department of Labor, Wage and Hour Division, according to  
622 the procedures and requirements of federal law[:]

623 Section 9. **Effective date.**

624 This bill takes effect on May 1, 2024.