

HUMAN RESOURCE MANAGEMENT

AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Morgan Philpot

This act modifies personnel management procedures for processing career service employee grievances. The act makes certain technical changes and has a July 1, 2003 effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

67-19a-303, as last amended by Chapter 204, Laws of Utah 1991

67-19a-401, as last amended by Chapter 21, Laws of Utah 1999

67-19a-406, as last amended by Chapter 79, Laws of Utah 1996

67-19a-407, as enacted by Chapter 191, Laws of Utah 1989

78-2-2, as last amended by Chapter 302, Laws of Utah 2001

78-2a-3, as last amended by Chapters 255 and 302, Laws of Utah 2001

REPEALS:

67-19a-408, as last amended by Chapter 79, Laws of Utah 1996

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

Section 1. Section **67-19a-303** is amended to read:

67-19a-303. Employees' rights in grievance and appeals procedure.

(1) For the purpose of processing a grievance, a career service employee may:

(a) obtain assistance by a representative of the employee's choice to act as an advocate at any level of the grievance procedure;

(b) request a reasonable amount of time during work hours to confer with the representative and prepare the grievance; **h [f] and [f] h**

(c) call other employees as witnesses at a grievance hearing **h [f] . [f] [~~and~~] h**



28 ~~h [(d) obtain discovery in accordance with the Utah Rules of Civil Procedure at the~~
29 ~~evidentiary hearing stage of the grievance process.] h~~

30 (2) The state shall allow employees to attend and testify at the grievance hearing as
31 witnesses if the employee has given reasonable advance notice to his immediate supervisor.

32 (3) No person may take any reprisals against any career service employee for use of
33 grievance procedures specified in this chapter.

34 (4) (a) The employing agency of an employee who files a grievance may not place
35 grievance forms, grievance materials, correspondence about the grievance, agency and
36 department replies to the grievance, or other documents relating to the grievance in the
37 employee's personnel file.

38 (b) The employing agency of an employee who files a grievance may place records of
39 disciplinary action in the employee's personnel file.

40 (c) If any disciplinary action against an employee is rescinded through the grievance
41 procedures established in this chapter, the agency and the Department of Human Resource
42 Management shall remove the record of the disciplinary action from the employee's agency
43 personnel file and central personnel file.

44 (d) An agency may maintain a separate grievance file relating to an employee's
45 grievance, but shall discard the file after three years.

46 Section 2. Section **67-19a-401** is amended to read:

47 **67-19a-401. Time limits for submission of appeal by aggrieved employee --**

48 **Voluntary termination of employment -- Group grievances.**

49 (1) Subject to the standing requirements contained in Part 3 and the restrictions
50 contained in this part, a career service employee may have a grievance addressed by following
51 the procedures specified in this part.

52 (2) The employee and the person to whom the grievance is directed may agree in
53 writing to waive or extend grievance steps 2, 3, or 4 or the time limits specified for those
54 grievance steps, as outlined in Section 67-19a-402.

55 (3) Any writing made pursuant to Subsection (2) must be submitted to the
56 administrator.

57 (4) (a) Unless the employee meets the requirements for excusable neglect established
58 by rule, if the employee fails to process the grievance to the next step within the time limits

59 established in this part, he has waived his right to process the grievance or to obtain judicial
60 review of the grievance.

61 (b) Unless the employee meets the requirements for excusable neglect established by
62 rule, if the employee fails to process the grievance to the next step within the time limits
63 established in this part, the grievance is considered to be settled based on the decision made at
64 the last step.

65 (5) (a) Unless the employee meets the requirements for excusable neglect established
66 by rule, an employee may submit a grievance for review under this chapter only if the
67 employee submits the grievance:

68 (i) within 20 working days after the event giving rise to the grievance; or

69 (ii) within 20 working days after the employee has knowledge of the event giving rise
70 to the grievance.

71 (b) Notwithstanding Subsection (5)(a), an employee may not submit a grievance more
72 than one year after the event giving rise to the grievance.

73 (6) A person who has voluntarily terminated his employment with the state may not
74 submit a grievance after he has terminated his employment.

75 (7) (a) When several employees allege the same grievance, they may submit a group
76 grievance by following the procedures and requirements of this chapter.

77 (b) In submitting a group grievance, each aggrieved employee shall sign the complaint.

78 (c) The administrator [~~and board~~] may not treat a group grievance as a class action, but
79 may select one aggrieved employee's grievance and address that grievance as a test case.

80 Section 3. Section **67-19a-406** is amended to read:

81 **67-19a-406. Procedural steps to be followed by aggrieved employee -- Hearing**
82 **before hearing officer -- Evidentiary and procedural rules.**

83 (1) (a) The administrator shall employ a certified court reporter to record the hearing
84 and prepare an official transcript of the hearing.

85 (b) The official transcript of the proceedings and all exhibits, briefs, motions, and
86 pleadings received by the hearing officer are the official record of the proceeding.

87 (2) (a) The agency has the burden of proof in all grievances resulting from dismissals,
88 demotions, suspensions, written reprimands, reductions in force, and disputes concerning
89 abandonment of position.

90 (b) The employee has the burden of proof in all other grievances.

91 (c) The party with the burden of proof must prove their case by ~~h~~ [f] **substantial** [f] [a
92 **preponderance of the**] ~~h~~ evidence ~~h~~ **[standard]** ~~h~~ .

92a **h (d) EITHER PARTY MAY OBTAIN DISCOVERY IN ACCORDANCE WITH THE UTAH RULES OF**
92b **CIVIL PROCEDURE AT THE EVIDENTIARY HEARING STAGE OF THE GRIEVANCE PROCESS.** ~~h~~

93 (3) (a) The hearing officer shall issue a written decision within 20 working days after
94 the hearing is adjourned.

95 ~~[(b) If the hearing officer does not issue a decision within 20 working days, the agency~~
96 ~~that is a party to the grievance is not liable for any claimed back wages or benefits after the date~~
97 ~~the decision is due.]~~

98 (b) The hearing officer's decision is considered the final decision of the Career Service
99 Review Board.

100 (4) The hearing officer may:

101 (a) ~~[not]~~ award attorneys' fees ~~[or costs]~~ to ~~[either party]~~ any career service employee
102 who prevails in a grievance;

103 (b) close a hearing by complying with the procedures and requirements of Title 52,
104 Chapter 4, Open and Public Meetings;

105 (c) seal the file and the evidence produced at the hearing if the evidence raises
106 questions about an employee's character, professional competence, or physical or mental
107 health;

108 (d) grant continuances according to board rule; and

109 (e) decide questions or disputes concerning standing in accordance with Section
110 67-19a-301.

111 Section 4. Section **67-19a-407** is amended to read:

112 **67-19a-407. Appeal to Utah Supreme Court.**

113 ~~[(1)(a)]~~ The employee or the agency may appeal the hearing officer's decision on a
114 grievance to the ~~[board if:]~~ Utah Supreme Court.

115 ~~[(i) the appealing party files a notice of appeal with the administrator within ten~~
116 ~~working days after the receipt of the decision or the expiration of the period for decision,~~
117 ~~whichever is first; and]~~

118 ~~[(ii) the appealing party meets the requirements for appeal established in Subsection~~
119 ~~(2).]~~

120 ~~[(b) The appealing party shall submit a copy of the official transcript of the hearing to~~

121 the administrator.]

122 [~~(2) The employee or the agency may appeal the hearing officer's decision on a~~
123 ~~grievance to the board only if the appealing party alleges that:]~~

124 [~~(a) the hearing officer did not issue a decision within 20 working days after the~~
125 ~~hearing adjourned;]~~

126 [~~(b) the appealing party is dissatisfied with the decision;]~~

127 [~~(c) the appealing party believes that the decision was based upon an incorrect or~~
128 ~~arbitrary interpretation of the facts; or]~~

129 [~~(d) the appealing party believes that the hearing officer made an erroneous conclusion~~
130 ~~of law.]~~

131 Section 5. Section **78-2-2** is amended to read:

132 **78-2-2. Supreme Court jurisdiction.**

133 (1) The Supreme Court has original jurisdiction to answer questions of state law
134 certified by a court of the United States.

135 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and
136 authority to issue all writs and process necessary to carry into effect its orders, judgments, and
137 decrees or in aid of its jurisdiction.

138 (3) The Supreme Court has appellate jurisdiction, including jurisdiction of
139 interlocutory appeals, over:

140 (a) a judgment of the Court of Appeals;

141 (b) cases certified to the Supreme Court by the Court of Appeals prior to final
142 judgment by the Court of Appeals;

143 (c) discipline of lawyers;

144 (d) final orders of the Judicial Conduct Commission;

145 (e) final orders and decrees in formal adjudicative proceedings originating with:

146 (i) the Public Service Commission;

147 (ii) the State Tax Commission;

148 (iii) the School and Institutional Trust Lands Board of Trustees;

149 (iv) the Board of Oil, Gas, and Mining;

150 (v) the state engineer; ~~or~~

151 (vi) the executive director of the Department of Natural Resources reviewing actions of

152 the Division of Forestry, Fire and State Lands; or

153 (vii) the Career Service Review Board;

154 (f) final orders and decrees of the district court review of informal adjudicative
155 proceedings of agencies under Subsection (3)(e);

156 (g) a final judgment or decree of any court of record holding a statute of the United
157 States or this state unconstitutional on its face under the Constitution of the United States or the
158 Utah Constitution;

159 (h) interlocutory appeals from any court of record involving a charge of a first degree
160 or capital felony;

161 (i) appeals from the district court involving a conviction or charge of a first degree
162 felony or capital felony;

163 (j) orders, judgments, and decrees of any court of record over which the Court of
164 Appeals does not have original appellate jurisdiction; and

165 (k) appeals from the district court of orders, judgments, or decrees ruling on legislative
166 subpoenas.

167 (4) The Supreme Court may transfer to the Court of Appeals any of the matters over
168 which the Supreme Court has original appellate jurisdiction, except:

169 (a) capital felony convictions or an appeal of an interlocutory order of a court of record
170 involving a charge of a capital felony;

171 (b) election and voting contests;

172 (c) reapportionment of election districts;

173 (d) retention or removal of public officers;

174 (e) matters involving legislative subpoenas; and

175 (f) those matters described in Subsections (3)(a) through (d).

176 (5) The Supreme Court has sole discretion in granting or denying a petition for writ of
177 certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall
178 review those cases certified to it by the Court of Appeals under Subsection (3)(b).

179 (6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b,
180 Administrative Procedures Act, in its review of agency adjudicative proceedings.

181 Section 6. Section **78-2a-3** is amended to read:

182 **78-2a-3. Court of Appeals jurisdiction.**

183 (1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue
184 all writs and process necessary:

185 (a) to carry into effect its judgments, orders, and decrees; or

186 (b) in aid of its jurisdiction.

187 (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of
188 interlocutory appeals, over:

189 (a) the final orders and decrees resulting from formal adjudicative proceedings of state
190 agencies or appeals from the district court review of informal adjudicative proceedings of the
191 agencies, except the Public Service Commission, State Tax Commission, School and
192 Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions
193 reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas,
194 and Mining, ~~and~~ the state engineer, and the Career Service Review Board;

195 (b) appeals from the district court review of:

196 (i) adjudicative proceedings of agencies of political subdivisions of the state or other
197 local agencies; and

198 (ii) a challenge to agency action under Section 63-46a-12.1;

199 (c) appeals from the juvenile courts;

200 (d) interlocutory appeals from any court of record in criminal cases, except those
201 involving a charge of a first degree or capital felony;

202 (e) appeals from a court of record in criminal cases, except those involving a
203 conviction or charge of a first degree felony or capital felony;

204 (f) appeals from orders on petitions for extraordinary writs sought by persons who are
205 incarcerated or serving any other criminal sentence, except petitions constituting a challenge to
206 a conviction of or the sentence for a first degree or capital felony;

207 (g) appeals from the orders on petitions for extraordinary writs challenging the
208 decisions of the Board of Pardons and Parole except in cases involving a first degree or capital
209 felony;

210 (h) appeals from district court involving domestic relations cases, including, but not
211 limited to, divorce, annulment, property division, child custody, support, parent-time,
212 visitation, adoption, and paternity;

213 (i) appeals from the Utah Military Court; and

214 (j) cases transferred to the Court of Appeals from the Supreme Court.
215 (3) The Court of Appeals upon its own motion only and by the vote of four judges of
216 the court may certify to the Supreme Court for original appellate review and determination any
217 matter over which the Court of Appeals has original appellate jurisdiction.
218 (4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b,
219 Administrative Procedures Act, in its review of agency adjudicative proceedings.
220 **Section 7. Repealer.**
221 This act repeals:
222 **Section 67-19a-408, Career Service Review Board hearing -- Evidentiary and**
223 **procedural rules.**
224 **Section 8. Effective date.**
225 This act takes effect on July 1, 2003.

Legislative Review Note
as of 2-20-03 8:39 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0289

Human Resource Management Amendments

25-Feb-03

7:36 PM

State Impact

If the discovery provisions of the bill occur at the Executive Director level there could be significant costs to the state. To the extent that discovery occurs at the Career Service Review Board level costs would be minimal. There are also potential attorney fees that state agencies may have to pay associated with the provisions of the bill.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst