

1 **STATE PERSONNEL MANAGEMENT ACT**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Daniel R. Liljenquist**

6 House Sponsor: Brad L. Dee

7

8 **LONG TITLE**

9 **General Description:**

10 This bill eliminates the reappointment register from which certain career service
11 employees must be rehired.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ eliminates the reappointment register for:
 - 15 • a career service employee appointed to an exempt position who is not retained
 - 16 by the appointing authority; and
 - 17 • a career service employee separated in a reduction in force;
- 18 ▶ allows for preferential consideration for a career service employee separated in a
19 reduction in force who applies for another career service position;
- 20 ▶ removes from the remedies available to the Career Service Review Board the ability
21 to place an employee on the reappointment register; and
- 22 ▶ makes technical changes.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides an immediate effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **67-19-18**, as last amended by Laws of Utah 2006, Chapter 139

30 67-19a-408, as last amended by Laws of Utah 2006, Chapter 14

31 REPEALS:

32 67-19-17, as last amended by Laws of Utah 2006, Chapter 139

33

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

35 Section 1. Section 67-19-18 is amended to read:

36 67-19-18. Dismissals and demotions -- Grounds -- Disciplinary action --

37 Procedure -- Reductions in force.

38 (1) [~~Career~~] A career service [~~employees~~] employee may be dismissed or demoted:

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

40 (b) for just causes [~~such as~~], including inefficiency, incompetency, failure to maintain
41 skills or adequate performance levels, insubordination, disloyalty to the orders of a superior,
42 misfeasance, malfeasance, or nonfeasance in office.

43 (2) [~~Employees~~] An employee may not be dismissed because of race, sex, age,
44 disability, national origin, religion, political affiliation, or other nonmerit factor including the
45 exercise of rights under this chapter.

46 (3) [~~The~~] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
47 Act, the executive director shall establish rules governing the procedural and documentary
48 requirements of disciplinary dismissals and demotions.

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

53 (5) (a) A career service employee may not be demoted or dismissed unless the
54 department head or designated representative has complied with this subsection.

55 (b) The department head or designated representative notifies the employee in writing
56 of the reasons for the dismissal or demotion.

57 (c) The employee has no less than five working days to reply and have the reply

58 considered by the department head.

59 (d) The employee has an opportunity to be heard by the department head or designated
60 representative.

61 (e) Following the hearing, the employee may be dismissed or demoted if the
62 department head finds adequate cause or reason.

63 (6) (a) Reductions in force required by inadequate funds, change of workload, or lack
64 of work are governed by retention [~~rosters~~] points established by the executive director.

65 (b) Under those circumstances:

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

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

70 (iii) (A) Career service employees shall be separated in the order of their retention
71 points, the employee with the lowest points to be discharged first.

72 (B) Retention points for each career service employee shall be computed according to
73 rules established by the executive director, allowing appropriate consideration for proficiency
74 and [~~for~~] seniority in state government, including any active duty military service fulfilled
75 subsequent to original state appointment.

76 [~~(iv) A career service employee who is separated in a reduction in force shall be:]~~
77 [~~(A) placed on the reappointment roster provided for in Subsection 67-19-17(2); and]~~
78 [~~(B) reappointed without examination to any vacancy for which the employee is~~
79 ~~qualified which occurs within one year of the date of the separation.]~~

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

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

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

86 consideration under Subsection (6)(c)(i).

87 ~~[(e)]~~ (d) (i) An employee separated due to a reduction in force may appeal to the
88 department head for an administrative review.

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

91 (iii) The employee may appeal the decision of the department head according to the
92 grievance and appeals procedure of this act.

93 Section 2. Section **67-19a-408** is amended to read:

94 **67-19a-408. Career Service Review Board hearing -- Evidentiary and**
95 **procedural rules.**

96 (1) The board shall:

97 (a) hold a hearing to review the hearing officer's decision not later than 30 days after it
98 receives the official transcript and the briefs;

99 (b) review the decision of the hearing officer by considering the official record of that
100 hearing and the briefs of the parties; and

101 (c) issue its written decision addressing the hearing officer's decision within 40
102 working days after the record for its proceeding is closed.

103 ~~[(2) In addition to whatever other remedy the board grants, it may order that the~~
104 ~~employee be placed on the reappointment roster provided for by Section 67-19-17 for~~
105 ~~assignment to another agency.]~~

106 ~~[(3)]~~ (2) If the board does not issue its written decision within 40 working days after
107 closing the record, the agency that is a party to the grievance is not liable for any claimed back
108 wages or benefits after the date the decision is due.

109 ~~[(4)]~~ (3) The board may not award attorneys' fees or costs to either party.

110 ~~[(5)]~~ (4) The board may close a hearing by complying with the procedures and
111 requirements of Title 52, Chapter 4, Open and Public Meetings Act.

112 ~~[(6)]~~ (5) The board may seal the file and the evidence produced at the hearing if the
113 evidence raises questions about an employee's character, professional competence, or physical

114 or mental health.

115 Section 3. **Repealer.**

116 This bill repeals:

117 Section **67-19-17, Reappointment of employees not retained in exempt position.**

118 Section 4. **Effective date.**

119 If approved by two-thirds of all the members elected to each house, this bill takes effect

120 upon approval by the governor, or the day following the constitutional time limit of Utah

121 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,

122 the date of veto override.