

PUBLIC EMPLOYEE STATUS MODIFICATIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions related to employment by a municipality.

Highlighted Provisions:

This bill:

- ▶ clarifies provisions related to the classified civil service;
- ▶ amends provisions related to duration and termination of a municipal employee;
- ▶ amends provisions related to the discharge, suspension, or involuntary transfer of a municipal employee and related procedures; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-3-1002, as last amended by Laws of Utah 2001, Chapter 178

10-3-1105, as last amended by Laws of Utah 2004, Chapter 260

10-3-1106, as last amended by Laws of Utah 2008, Chapters 19 and 115

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

Section 1. Section **10-3-1002** is amended to read:

10-3-1002. Classified civil service -- Places of employment constituting classified

30 **civil service -- Appointments to and from classified civil service.**

31 (1) The classified civil service shall consist of all places of employment now existing
32 or hereafter created in or under the police department and the fire department of each first or
33 second class city that establishes a civil service commission and the health department in each
34 first class city that establishes a civil service commission, except the head of the departments,
35 deputy chiefs of the police and fire departments, and assistant chiefs of the police department
36 and fire department in cities of the first and second class, and the members of the board of
37 health of the departments.

38 (2) No appointments to any of the places of employment constituting the classified
39 civil service in the departments shall be made except according to law and under the rules and
40 regulations of the civil service commission.

41 (3) The head of each of the departments may, and the deputy chiefs of the police and
42 fire departments and assistant chiefs of the police [~~department~~] and fire departments shall, be
43 appointed from the classified civil service, and upon the expiration of the term or upon the
44 appointment of a successor shall be returned thereto.

45 Section 2. Section **10-3-1105** is amended to read:

46 **10-3-1105. Municipal employees -- Duration and termination of employment --**
47 **Exceptions.**

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

52 (b) Subsection (1)(a) does not apply to an employee who is discharged or involuntarily
53 transferred to a position with less remuneration if the discharge or involuntary transfer is the
54 result of a layoff or reorganization.

55 (2) Subsection (1)(a) does not apply to:

56 (a) [~~an officer~~] subject to Subsection (3), a person appointed by the mayor, city
57 manager, or other person or body [exercising executive] with the power to appoint in the

58 municipality[;] if:

59 (i) the appointment is made in writing;

60 (ii) the person's written job description identifies the person's position as exempt from
61 the protections described in Subsection (1)(a); and

62 (iii) the position is described in an ordinance as exempt from the protections described
63 in Subsection (1)(a);

64 (b) a member of the municipality's police department or fire department who is a
65 member of the classified civil service in a first or second class city;

66 (c) a person who holds a position described in Subsections (2)(c)(i) through (xii) or an
67 equivalent position designated in a municipal ordinance or personnel policy:

68 [~~Ⓒ~~] (i) a police chief of the municipality;

69 [~~Ⓓ~~] (ii) a deputy or assistant police chief of the municipality;

70 [~~Ⓔ~~] (iii) a fire chief of the municipality;

71 [~~Ⓕ~~] (iv) a deputy or assistant fire chief of the municipality;

72 [~~Ⓖ~~] (v) a head of a municipal department or division;

73 [~~Ⓗ~~] (vi) a deputy of a head of a municipal department or division;

74 [~~Ⓙ~~] (vii) a superintendent;

75 [~~Ⓜ~~] (viii) a probationary employee of the municipality;

76 [~~Ⓚ~~] (ix) a part-time employee of the municipality, including paid call firefighters; [~~Ⓞ~~]

77 [~~Ⓡ~~] (x) a seasonal or temporary employee of the municipality[-];

78 (xi) a person who works in the office of an elected official; or

79 (xii) a secretarial or administrative assistant support position that is specifically

80 designated as a position to assist an elected official or the head or deputy head of a municipal
81 department;

82 [~~3~~] ~~Nothing in this section or Section 10-3-1106 may be construed to limit a~~
83 ~~municipality's ability to define cause for an employee termination or reduction in force.]~~

84 (d) an individual appointed to a position under Part 9, Appointed Officials and Their
85 Duties, including:

86 (i) the city engineer;

87 (ii) the city recorder;

88 (iii) the city treasurer; or

89 (iv) the city attorney; or

90 (e) an employee who has:

91 (i) acknowledged in writing that the employee's employment status is appointed or
92 at-will; or

93 (ii) voluntarily waived the procedures required by Section 10-3-1106.

94 (3) In addition to the persons described in Subsections (2)(b) through (e), a
95 municipality may appoint up to 5% of the municipality's workforce in accordance with
96 Subsection (2)(a).

97 (4) Nothing in this section or Section 10-3-1106 may be construed to limit a
98 municipality's ability to define cause for an employee termination or reduction in force.

99 Section 3. Section **10-3-1106** is amended to read:

100 **10-3-1106. Discharge, suspension without pay, or involuntary transfer -- Appeals**
101 **-- Board -- Procedure.**

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

104 (a) because of the employee's politics or religious belief; or

105 (b) incident to, or through changes, either in the elective officers, governing body, or
106 heads of departments.

107 (2) (a) If an employee other than an employee described in Subsection 10-3-1105(2) is
108 discharged, suspended for more than two days without pay, or involuntarily transferred from
109 one position to another with less remuneration for any disciplinary reason, the employee may,
110 subject to Subsection (2)(b), appeal the final decision to discharge, [~~suspension~~] suspend
111 without pay, or [~~involuntary~~] involuntarily transfer to [~~a board to be known as the~~] an appeal
112 board[;] or hearing officer established under Subsection (7).

113 (b) If the municipality provides an internal grievance procedure, the employee shall

114 exhaust the employee's rights under that grievance procedure before appealing to the appeal
115 board or hearing officer.

116 (3) (a) Each appeal under Subsection (2) shall be taken by filing written notice of the
117 appeal with the municipal recorder in accordance with procedures established by a municipality
118 within 10 calendar days after:

119 (i) if the municipality provides an internal grievance procedure, the employee receives
120 notice of the final disposition of the municipality's internal grievance procedure; or

121 (ii) if the municipality does not provide an internal grievance procedure, the discharge,
122 suspension, or involuntary transfer.

123 (b) (i) Upon the filing of an appeal under Subsection (3)(a), the municipal recorder
124 shall ~~[forthwith]~~ refer a copy of ~~[the]~~ a properly filed appeal to the appeal board or hearing
125 officer described in Subsection (7).

126 (ii) Upon receipt of the referral from the municipal recorder, the appeal board ~~[shall~~
127 ~~forthwith commence its investigation,]~~ or hearing officer shall schedule a hearing to take and
128 receive evidence[;] and fully hear and determine the matter which relates to the [cause] reason
129 for the discharge, suspension, or transfer.

130 (4) (a) An employee who is the subject of the discharge, suspension, or transfer may:

131 ~~[(a)]~~ (i) appear in person and be represented by counsel;

132 ~~[(b)]~~ (ii) have a ~~[public]~~ hearing open to the public;

133 ~~[(c)]~~ (iii) confront the witness whose testimony is to be considered; and

134 ~~[(d)]~~ (iv) examine the evidence to be considered by the appeal board.

135 (b) An employee or the municipality may request the hearing described in Subsection
136 (4)(a)(ii).

137 (5) (a) (i) ~~[Each]~~ A decision of the appeal board shall be by secret ballot[; and shall be
138 certified to the recorder within 15 days from the date the matter is referred to it;].

139 (ii) The appeal board or the hearing officer shall certify a decision by the appeal board
140 or hearing officer, respectively, with the recorder no later than 15 days after the day on which
141 the hearing is held, except as provided in Subsection (5)(a)(ii)(iii).

142 ~~[(†)]~~ (iii) For good cause, the appeal board or hearing officer may extend the 15-day
143 period under Subsection (5)(a)~~[(†)]~~(ii) to a maximum of 60 calendar days, if the employee and
144 municipality both consent.

145 (b) If ~~[(†)]~~ the appeal board or hearing officer finds in favor of the employee, the appeal
146 board or hearing officer shall provide that the employee shall receive:

147 (i) the employee's salary for the period of time during which the employee is
148 discharged or suspended without pay less any amounts the employee earned from other
149 employment during this period of time; or

150 (ii) any deficiency in salary for the period during which the employee was transferred
151 to a position of less remuneration.

152 (6) (a) A final action or order of the appeal board or hearing officer may be reviewed
153 by the Court of Appeals by filing with that court a petition for review.

154 (b) ~~[Each]~~ A petition under Subsection (6)(a) shall be filed within 30 days after the
155 issuance of the final action or order of the appeal board or hearing officer.

156 (c) The Court of Appeals' review shall be:

157 (i) on the record of the appeal board or hearing officer; and

158 (ii) for the purpose of determining if the appeal board or hearing officer abused its
159 discretion or exceeded its authority.

160 (7) (a) The method and manner of choosing a hearing officer or the members of the
161 appeal board, the number of members, the designation of ~~[their terms]~~ a hearing officer's or
162 appeal board member's term of office, and the procedure for conducting an appeal and the
163 standard of review shall be prescribed by the governing body of each municipality by
164 ordinance.

165 (b) For a municipality operating under a form of government other than a
166 council-mayor form under Chapter 3b, Part 2, Council-mayor Form of Municipal Government,
167 an ordinance adopted under Subsection (7)(a) may provide that the governing body of the
168 municipality shall serve as the appeal board.

169 (8) This section does not apply to an employee:

170 (a) described in Subsection 10-3-1105(2); or
171 (b) discharged or transferred to a position with less remuneration if the discharge or
172 transfer is the result of a layoff, reorganization, or other non-disciplinary reason.