

Representative Michael E. Noel proposes the following substitute bill:

ATTORNEY GENERAL EMPLOYMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the Attorney General Career Service Act.

Highlighted Provisions:

This bill:

- ▶ provides that an individual hired as an attorney in the Office of the Attorney General on or after May 10, 2016, is exempt from the career service system;
- ▶ addresses the circumstances under which the attorney general may promote, transfer, or increase the pay of an individual who is employed by the Office of the Attorney General as an attorney; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-5-8, as last amended by Laws of Utah 2012, Chapter 101

67-5-9, as last amended by Laws of Utah 2007, Chapter 166



26 **67-5-12**, as last amended by Laws of Utah 2012, Chapter 369
27 **67-19-15**, as last amended by Laws of Utah 2015, Chapter 401



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

30 Section 1. Section **67-5-8** is amended to read:

31 **67-5-8. Eligibility for career service status -- Eligibility for promotion, transfer,**
32 **or raise.**

33 (1) (a) The attorney general has sole authority to determine who may be employed with
34 the Office of the Attorney General.

35 (b) An employee of the state or any of [~~its~~] the state's departments or agencies has no
36 claim or right to a position in the attorney general's office by virtue of that employment.

37 (2) (a) An employee of the Office of the Attorney General shall be placed in a career
38 service status if:

39 (i) for an employee who is an attorney, the [~~attorney is~~] employee is:

40 (A) a member in good standing of the Utah State Bar Association; and

41 (B) hired before May 10, 2016; and

42 (ii) except as provided in Subsection (3), the employee has been employed by the
43 Office of the Attorney General as a probationary employee for a period of:

44 (A) at least one year but no more than 18 months; or

45 (B) in the case of investigators, at least 18 months, but no more than two years.

46 (b) An employee [~~now~~] employed by the attorney general's office in career service may
47 not be terminated under this chapter except for cause.

48 (3) (a) The attorney general shall determine whether an employee should be granted
49 career service status.

50 (b) If, at the end of the probationary period established under Subsection (2), the
51 attorney general determines that an employee should be granted career service status, the
52 attorney general shall notify the employee in writing of that decision and place a copy of the
53 notification in the employee's personnel file.

54 (c) If the attorney general determines that career service status should not be granted,
55 the attorney general may either terminate the employee or extend the probationary period for a
56 period not to exceed one year.

57 (d) The attorney general shall notify the employee in writing of that decision and place
58 a copy of the notification in the employee's personnel file.

59 (e) An employee terminated under this section has no appeal rights under this chapter.

60 (4) (a) An individual who is hired by the Office of the Attorney General as an attorney
61 on or after May 10, 2016:

62 (i) is exempt from the career service system of the Office of the Attorney General
63 established under this chapter; and

64 (ii) may not be in a career service status.

65 (b) An employee of the Office of the Attorney General who is in a career service status
66 may voluntarily elect to be removed from a career service status and exempt from the career
67 service system of the Office of the Attorney General established under this chapter.

68 (5) On or after May 10, 2016, the attorney general may promote, transfer, or increase
69 the pay of an individual employed by the Office of the Attorney General as an attorney only if
70 the individual:

71 (a) is exempt from the career service system of the Office of the Attorney General
72 established under this chapter; or

73 (b) voluntarily elects to be removed from a career service status and exempt from the
74 career service system of the Office of the Attorney General established under this chapter.

75 Section 2. Section **67-5-9** is amended to read:

76 **67-5-9. Reassignment of career status employees -- Additional compensation for**
77 **managerial assignments -- Employment of special assistant attorneys general --**
78 **Termination of employees -- Salary increases.**

79 (1) This chapter does not affect the authority of the attorney general to:

80 [(1)] (a) subject to Subsection (2), assign and reassign employees in a career status to
81 different positions on [his] the attorney general's staff[. The salary of an employee reassigned
82 to a different position shall not be decreased by reason of reassignment, except that if the
83 employee reassigned occupies the position of chief deputy attorney general, the salary may be
84 reduced by not more than 15% upon the assignment to a different position];

85 [(2)] (b) subject to Subsection (3), develop a plan for additional compensation for
86 career status employees who accept managerial assignments within the office[. The provisions
87 of Subsection (1) notwithstanding, the attorney general may discontinue any additional

88 compensation if the employee no longer holds a managerial assignment. Additional
89 compensation provided under this section shall be determined by the attorney general pursuant
90 to the plan developed by the Office of the Attorney General. If the employee no longer holds a
91 managerial assignment, and the attorney general decides to discontinue any additional
92 compensation, the reduction may not place the employee at a salary below where the employee
93 would be through normal salary increases if the employee had not been in a managerial
94 position];

95 [(3)] (c) employ special assistant attorneys general, who shall not be subject to this
96 chapter, to represent the state in particular lawsuits or to handle particular legal matters for the
97 state;

98 [(4)] (d) terminate the employment of any employee of the Office of the Attorney
99 General who is not in a career service status; or

100 [(5)] (e) establish the salary or determine salary increases of any employee under this
101 chapter.

102 (2) (a) If the attorney general assigns or reassigns an employee in a career status to a
103 different position, the attorney general may not decrease the employee's salary as a result of the
104 assignment or reassignment.

105 (b) Notwithstanding Subsection (2)(a) and subject to Subsection (2)(c), the attorney
106 general may decrease the salary of an employee in a career status if:

107 (i) the employee is reassigned from a managerial assignment to a non-managerial
108 assignment;

109 (ii) the decrease in salary relates only to the reassignment described in Subsection
110 (2)(b)(i); and

111 (iii) after any decrease, the employee's salary is equal to or greater than what the
112 employee's salary would have been, based on normal salary increases, had the employee never
113 been in the managerial position.

114 (c) If the attorney general reassigns an employee in a career status from the position of
115 chief deputy attorney general, the attorney general may not decrease the employee's salary by
116 more than 15%.

117 (3) The attorney general shall, in accordance with the plan described in Subsection
118 (1)(b), determine any additional compensation for a managerial assignment.

119 Section 3. Section 67-5-12 is amended to read:

120 **67-5-12. Dismissal of career status employees -- Causes -- Procedure -- Retention**
121 **roster -- Reappointment register.**

122 (1) (a) Employees in a career status may be dismissed only:

123 (i) to advance the good of public service;

124 (ii) where funds have expired or work no longer exists; or

125 (iii) for any of the following causes or reasons:

126 (A) noncompliance with provisions in the Office of the Attorney General policy

127 manual[-] or division policies, and, for attorneys, noncompliance with the Rules of Professional
128 Conduct;

129 (B) work performance that is inefficient or incompetent;

130 (C) failure to maintain skills and adequate performance levels;

131 (D) insubordination or disloyalty to the orders of a superior;

132 (E) misfeasance, malfeasance, or nonfeasance;

133 (F) failure to advance the good of the public service, including conduct on or off duty
134 which demeans or harms the effectiveness or ability of the office to fulfill its mission or legal
135 obligations;

136 (G) conduct on or off duty which creates a conflict of interest with the employee's
137 public responsibilities or impact that employee's ability to perform [~~his or her~~] the employee's
138 job assignments;

139 (H) any incident involving intimidation, physical harm, threats of physical harm
140 against coworkers, management, or the public;

141 (I) failure to meet the requirements of the position;

142 (J) dishonesty; or

143 (K) misconduct.

144 (b) Employees in career status may not be dismissed for reasons of race, national
145 origin, religion, or political affiliation.

146 (2) (a) Except in aggravated cases of misconduct, an employee in a career status may
147 not be suspended, demoted, or dismissed without the following procedures:

148 [~~(a) The~~] (i) the attorney general or a designated representative [~~shall notify~~] notifies
149 the employee of the reasons for suspension, demotion, or dismissal[-];

150 ~~[(b) The]~~ (ii) the employee ~~[shall have]~~ has an opportunity to reply ~~[and have the reply~~
151 ~~considered by the attorney general or a designated representative.];~~

152 (iii) the attorney general or a designated representative considers the employee's reply;
153 and

154 ~~[(c) The]~~ (iv) the employee ~~[shall have]~~ has an opportunity to be heard by the attorney
155 general or a designated representative at a hearing.

156 ~~[(d)]~~ (b) Following ~~[a]~~ the hearing~~[, an employee may be suspended, demoted, or~~
157 ~~dismissed]~~ described in Subsection (2)(a)(iv), the attorney general or a designated
158 representative may suspend, demote, or dismiss the employee if the attorney general or a
159 designated representative finds adequate reason.

160 ~~[(e)]~~ (c) If the attorney general or a designated representative finds that retention of an
161 employee in a career service status would endanger the peace and safety of others or pose a
162 grave threat to the public interest, the employee may be summarily suspended pending
163 administrative hearings and a review by the Career Service Review Office.

164 (3) (a) An employee in a career status who is aggrieved by a decision of the attorney
165 general or a designated representative to suspend, demote, or dismiss the employee may appeal
166 the decision to the Career Service Review Office or its hearing officers by following the
167 procedures in Title 67, Chapter 19a, Grievance Procedures.

168 (b) Matters other than dismissal or demotion may be appealed to and reviewed by the
169 attorney general or a designated representative whose decision is final with no right of appeal
170 to the Career Service Review Office or its hearing officers.

171 (4) Disciplinary actions shall be supported by credible evidence, but the normal rules
172 of evidence in courts of law do not apply in hearings before the attorney general or a designated
173 representative or the Career Service Review Office or its hearing officers.

174 (5) (a) Reductions in force required by reinstatement of an employee under Section
175 [67-5-11](#), inadequate funds, change of workload, or lack of work shall be governed by a
176 retention roster to be maintained by the Office of the Attorney General and the requirements of
177 this Subsection (5).

178 (b) Except attorney general executive or administrative appointees, employees not in a
179 career status shall be separated before any employee in a career status.

180 (c) Retention points for each employee in a career status shall be based on the

181 employee's seniority in service within each employee category in the Office of the Attorney
182 General, including any military service fulfilled subsequent to the employee's original
183 appointment.

184 (d) Employees in career status shall be separated in the order of their retention points,
185 the employee with the lowest points to be discharged first.

186 (e) Those employees who are serving in other positions under Section 67-5-11 shall:

187 (i) have retention points determined as if they were working for the office; and

188 (ii) be separated in the order of the retention points as if they were working in the

189 Office of the Attorney General.

190 (f) An employee in a career status who is separated by reason of a reduction in force
191 shall be:

192 (i) placed on a reappointment register kept by the Office of the Attorney General for
193 one year; and

194 (ii) offered reappointment to a position in the same category in the Office of the
195 Attorney General before any employee not having a career status is appointed.

196 Section 4. Section 67-19-15 is amended to read:

197 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**
198 **positions -- Coverage of career service provisions.**

199 (1) Except as otherwise provided by law or by rules and regulations established for
200 federally aided programs, the following positions are exempt from the career service provisions
201 of this chapter and are designated under the following schedules:

202 (a) schedule AA includes the governor, members of the Legislature, and all other
203 elected state officers;

204 (b) schedule AB includes appointed executives and board or commission executives
205 enumerated in Section 67-22-2;

206 (c) schedule AC includes all employees and officers in:

207 (i) the office and at the residence of the governor;

208 (ii) the Utah Science Technology and Research Initiative (USTAR);

209 (iii) the Public Lands Policy Coordinating Council;

210 (iv) the Office of the State Auditor; and

211 (v) the Office of the State Treasurer;

- 212 (d) schedule AD includes employees who:
- 213 (i) are in a confidential relationship to an agency head or commissioner; and
- 214 (ii) report directly to, and are supervised by, a department head, commissioner, or
- 215 deputy director of an agency or its equivalent;
- 216 (e) schedule AG includes employees in the Office of the Attorney General [~~who are~~
- 217 ~~under their own career service pay plan under Sections 67-5-7 through 67-5-13~~];
- 218 (f) schedule AH includes:
- 219 (i) teaching staff of all state institutions; and
- 220 (ii) employees of the Utah Schools for the Deaf and the Blind who are:
- 221 (A) educational interpreters as classified by the department; or
- 222 (B) educators as defined by Section 53A-25b-102;
- 223 (g) schedule AN includes employees of the Legislature;
- 224 (h) schedule AO includes employees of the judiciary;
- 225 (i) schedule AP includes all judges in the judiciary;
- 226 (j) schedule AQ includes:
- 227 (i) members of state and local boards and councils appointed by the governor and
- 228 governing bodies of agencies;
- 229 (ii) a water commissioner appointed under Section 73-5-1;
- 230 (iii) other local officials serving in an ex officio capacity; and
- 231 (iv) officers, faculty, and other employees of state universities and other state
- 232 institutions of higher education;
- 233 (k) schedule AR includes employees in positions that involve responsibility:
- 234 (i) for determining policy;
- 235 (ii) for determining the way in which a policy is carried out; or
- 236 (iii) of a type not appropriate for career service, as determined by the agency head with
- 237 the concurrence of the executive director;
- 238 (l) schedule AS includes any other employee:
- 239 (i) whose appointment is required by statute to be career service exempt;
- 240 (ii) whose agency is not subject to this chapter; or
- 241 (iii) whose agency has authority to make rules regarding the performance,
- 242 compensation, and bonuses for its employees;

243 (m) schedule AT includes employees of the Department of Technology Services,
244 designated as executive/professional positions by the executive director of the Department of
245 Technology Services with the concurrence of the executive director;

246 (n) schedule AU includes patients and inmates employed in state institutions;

247 (o) employees of the Department of Workforce Services, designated as schedule AW:

248 (i) who are temporary employees that are federally funded and are required to work
249 under federally qualified merit principles as certified by the director; or

250 (ii) for whom substantially all of their work is repetitive, measurable, or transaction
251 based, and who voluntarily apply for and are accepted by the Department of Workforce
252 Services to work in a pay for performance program designed by the Department of Workforce
253 Services with the concurrence of the executive director; and

254 (p) for employees in positions that are temporary, seasonal, time limited, funding
255 limited, or variable hour in nature, under schedule codes and parameters established by the
256 department by administrative rule.

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

258 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

259 (ii) Removal from any appointive position under schedule A, unless otherwise
260 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

261 (b) Schedule B is the competitive career service schedule, consisting of:

262 (i) all positions filled through competitive selection procedures as defined by the
263 executive director; or

264 (ii) positions filled through a department approved on-the-job examination intended to
265 appoint a qualified person with a disability or a veteran as defined in Section 71-10-1.

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

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

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

273 (4) (a) Compensation for employees of the Legislature shall be established by the

274 directors of the legislative offices in accordance with Section 36-12-7.

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

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

281 (d) Unless otherwise provided by law, compensation for all other schedule A
282 employees shall be established by their appointing authorities, within ranges approved by, and
283 after consultation with the executive director of the Department of Human Resource
284 Management.

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

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

288 (b) does not elect to convert to career service exempt status in accordance with a rule
289 made by the department.