

OFFICE OF THE ATTORNEY GENERAL EMPLOYMENT

AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay J. Christofferson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to employees of the Office of the Attorney General.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to career service status of employees of the Office of the Attorney General;
- ▶ provides that employees hired after a specified date may not be given career service status;
- ▶ provides for certain employees to voluntarily elect to convert to a position with career service exempt status;
- ▶ authorizes the attorney general to adopt a policy for a review process for an employee in a career service exempt status who is recommended to be suspended, demoted, or dismissed;
- ▶ requires the attorney general to adopt a pay for performance plan and provides for the features of a plan; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 [67-5-7](#), as last amended by Laws of Utah 2021, Chapter 344

33 [67-5-8](#), as last amended by Laws of Utah 2012, Chapter 101

34 [67-5-9](#), as last amended by Laws of Utah 2007, Chapter 166

35 [67-5-12](#), as last amended by Laws of Utah 2012, Chapter 369

36 [67-5-13](#), as last amended by Laws of Utah 2007, Chapter 166

37 ENACTS:

38 [67-5-10.5](#), Utah Code Annotated 1953

39 [67-5-11.5](#), Utah Code Annotated 1953

40 REPEALS:

41 [67-5-6](#), as enacted by Laws of Utah 1973, Chapter 185



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

44 Section 1. Section **67-5-7** is amended to read:

45 **67-5-7. Establishment of employment system.**

46 (1) The purpose of this [~~chapter~~] section and Sections [67-5-8](#), [67-5-9](#), [67-5-10](#),
47 [67-5-10.5](#), [67-5-11](#), [67-5-11.5](#), [67-5-12](#), and [67-5-13](#) is to establish [~~a career service~~] an
48 employment system for employees of the Office of the Attorney General that will attract and
49 retain employees of proven ability and experience who will devote their full time to the service
50 of the state.

51 (2) The Office of the Attorney General may adopt policies necessary to implement this
52 [~~chapter~~] section and Sections [67-5-8](#), [67-5-9](#), [67-5-10](#), [67-5-10.5](#), [67-5-11](#), [67-5-11.5](#), [67-5-12](#),
53 and [67-5-13](#), including personnel and work policies different from those made by the Division
54 of Human Resource Management.

55 Section 2. Section **67-5-8** is amended to read:

56 **67-5-8. Eligibility for career service status.**

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

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

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

64 (i) the employee successfully completes the probationary period under Subsection
65 (2)(a)(iii) before the effective date of this section;

66 [(i)] (ii) for an employee who is an attorney, the attorney is a member in good standing
67 of the Utah State Bar Association; and

68 [(ii)] (iii) except as provided in Subsection (3), the employee has been employed by the
69 Office of the Attorney General as a probationary employee for a period of:

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

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

72 (b) An employee [~~now~~] employed by the [~~attorney general's office in~~] Office of the
73 Attorney General with career service status may not be terminated under this chapter except for
74 cause.

75 (3) (a) The attorney general shall determine whether an employee hired before the
76 effective date of this section should be granted career service status, subject to the employee
77 completing an applicable probationary period before the effective date of this section.

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

82 (c) If the attorney general determines that career service status should not be granted,
83 the attorney general:

84 (i) may either terminate the employee or extend the probationary period for a period
85 not to exceed one year[-]; and

86 [~~(d) The attorney general~~]

87 (ii) shall:

88 (A) notify the employee in writing of [~~that decision and~~] the attorney general's
89 determination; and

90 (B) place a copy of the notification in the employee's personnel file.

91 ~~[(e)]~~ (d) An employee terminated under ~~[this section]~~ Subsection (3)(c) has no appeal
 92 rights under this ~~[chapter.]~~ section and Sections [67-5-7](#), [67-5-9](#), [67-5-10](#), [67-5-11](#), [67-5-12](#), and
 93 [67-5-13](#).

94 (4) An employee of the Office of the Attorney General hired on or after the effective
 95 date of this section may not be given career service status.

96 Section 3. Section **67-5-9** is amended to read:

97 **67-5-9. Reassignment of career status employees -- Additional compensation for**
 98 **managerial assignments -- Employment of special assistant attorneys general --**
 99 **Termination of employees -- Salary increases.**

100 ~~[This chapter does]~~ (1) This section and Sections [67-5-7](#), [67-5-8](#), [67-5-10](#), [67-5-10.5](#),
 101 [67-5-11](#), [67-5-11.5](#), [67-5-12](#), and [67-5-13](#) do not affect the authority of the attorney general to:

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

108 ~~[(2)]~~ (b) develop a plan for additional compensation for a career service status
 109 ~~[employees who accept managerial assignments]~~ employee who accepts a managerial
 110 assignment within the office~~[: The provisions of Subsection (1) notwithstanding, the attorney~~
 111 ~~general may discontinue any additional compensation if the employee no longer holds a~~
 112 ~~managerial assignment. Additional compensation provided under this section shall be~~
 113 ~~determined by the attorney general pursuant to the plan developed by the Office of the Attorney~~
 114 ~~General. If the employee no longer holds a managerial assignment, and the attorney general~~
 115 ~~decides to discontinue any additional compensation, the reduction may not place the employee~~
 116 ~~at a salary below where the employee would be through normal salary increases if the~~
 117 ~~employee had not been in a managerial position],~~ subject to Subsection (3);

118 ~~[(3)]~~ (c) employ special assistant attorneys general, who ~~[shall not be]~~ are not subject
 119 to this ~~[chapter]~~ section or Section [67-5-7](#), [67-5-8](#), [67-5-10](#), [67-5-10.5](#), [67-5-11](#), [67-5-11.5](#),
 120 [67-5-12](#), or [67-5-13](#), to represent the state in particular lawsuits or to handle particular legal

121 matters for the state;

122 ~~[(4)]~~ (d) terminate the employment of any employee of the Office of the Attorney

123 General who is not in a career service status; or

124 ~~[(5)]~~ (e) establish the salary or determine salary increases of any employee ~~[under this~~
125 ~~chapter.]~~ of the Office of the Attorney General.

126 (2) (a) Except as provided in Subsection (2)(b), the salary of an employee in a career
127 service status who is reassigned to a different position in the Office of the Attorney General
128 may not be decreased because of the reassignment.

129 (b) The salary of an employee in a career service status who is reassigned to a different
130 position in the Office of the Attorney General may be reduced by not more than 15% upon the
131 reassignment if the employee's position before the reassignment is chief deputy attorney
132 general.

133 (3) (a) Any additional compensation paid to an employee holding a managerial
134 assignment shall be determined by the attorney general pursuant to the plan developed by the
135 Office of the Attorney General under Subsection (1)(b).

136 (b) (i) Subject to Subsection (3)(b)(ii), if the attorney general reassigns an employee
137 who holds a managerial position and who is paid additional compensation because of the
138 managerial position to a position that is not a managerial position, the attorney general may
139 discontinue the employee's additional compensation.

140 (ii) A discontinuance of additional compensation under Subsection (3)(b)(i) may not
141 result in the employee being paid a salary lower than the salary the employee would have been
142 paid, considering normal salary increases, if the employee had not been in a managerial
143 position.

144 Section 4. Section **67-5-10.5** is enacted to read:

145 **67-5-10.5. Career service employees -- Election to convert to a career service**
146 **exempt status -- Adoption of policy for review process for career service exempt status**
147 **employees.**

148 (1) As used in this section:

149 (a) "Career service exempt status" is the employment status of an employee who is
150 exempt from the career service provisions of Sections [67-5-7](#), [67-5-8](#), [67-5-9](#), [67-5-10](#),
151 [67-5-11](#), [67-5-12](#), and [67-5-13](#).

- 152 (b) "Eligible employee" is an employee:
- 153 (i) who, before the effective date of this section, is given career service status; or
- 154 (ii) (A) who was hired before the effective date of this section for a career service
- 155 status position;
- 156 (B) whose position is subject to a probationary period of service described in
- 157 Subsection 67-5-8(2)(a); and
- 158 (C) who, on the effective date of this section, has not yet completed the probationary
- 159 period of service.

160 (c) "Employee" means an individual employed by the Office of the Attorney General.

161 (2) An employee who, on the effective date of this section, is a career service employee

162 remains a career service employee unless the employee voluntarily elects to convert to career

163 service exempt status before March 30, 2024.

164 (3) The attorney general shall disseminate to each eligible employee information on

165 financial and other incentives for the eligible employee's voluntary election to convert to career

166 service exempt status.

167 (4) The attorney general may adopt a policy to implement a review process for an

168 employee in career service exempt status who is recommended to be suspended, demoted, or

169 dismissed from employment.

170 Section 5. Section **67-5-11.5** is enacted to read:

171 **67-5-11.5. Pay for performance plan.**

172 (1) As used in this section, "pay for performance plan" means a plan:

173 (a) for incentivizing an employee to meet or exceed production or performance goals;

174 (b) that is established before work begins;

175 (c) under which specific goals and targets for the employee are determined and

176 measurement procedures are in place; and

177 (d) that includes features described in Subsection (2).

178 (2) A pay for performance plan shall include:

179 (a) guidelines and criteria for performance policies and to administer pay based on an

180 employee's performance in furtherance of the mission of the Office of the Attorney General;

181 (b) employee performance ratings;

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

183 (d) supervisor verbal and written feedback based on the standards of performance and
184 behavior outlined in an employee's performance plan; and

185 (e) quarterly written evaluation of an employee's performance.

186 (3) No later than July 1, 2023, the attorney general shall:

187 (a) adopt a pay for performance plan; and

188 (b) subject to available funds and as necessary, adjust an employee's wage to reflect:

189 (i) subject to Subsection (4)(b), the salary range of the position classified plan for the
190 employee's position; and

191 (ii) an increase, decrease, or no change in the employee's wage:

192 (A) commensurate with an employee's performance as reflected by the evaluation
193 conducted in accordance with the pay for performance plan; and

194 (B) in an amount that is in accordance with the guidelines and criteria established for a
195 wage change in the pay for performance plan.

196 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
197 attorney general shall make rules:

198 (a) for the administration of a pay for performance plan; and

199 (b) authorizing an employee with career service status to receive a wage that exceeds
200 the salary range of the employee's career service status position if warranted based on the
201 employee's performance rating.

202 Section 6. Section **67-5-12** is amended to read:

203 **67-5-12. Dismissal of career service status employees -- Causes -- Procedure --**
204 **Retention roster -- Reappointment register.**

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

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

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

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

209 (A) noncompliance with provisions in the Office of Attorney General policy manual, or
210 division policies, and, for attorneys, noncompliance with the Rules of Professional Conduct;

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

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

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

214 (E) misfeasance, malfeasance, or nonfeasance;

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

218 (G) conduct on or off duty which creates a conflict of interest with the employee's
219 public responsibilities or impact that employee's ability to perform his or her job assignments;

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

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

223 (J) dishonesty; or

224 (K) misconduct.

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

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

229 (a) The attorney general or a designated representative shall notify the employee of the
230 reasons for suspension, demotion, or dismissal.

231 (b) The employee shall have an opportunity to reply and have the reply considered by
232 the attorney general or a designated representative.

233 (c) The employee shall have an opportunity to be heard by the attorney general or a
234 designated representative.

235 (d) Following a hearing, an employee may be suspended, demoted, or dismissed if the
236 attorney general or a designated representative finds adequate reason.

237 (e) If the attorney general or a designated representative finds that retention of an
238 employee would endanger the peace and safety of others or pose a grave threat to the public
239 interest, the employee may be summarily suspended pending administrative hearings and a
240 review by the Career Service Review Office.

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

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

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

251 (5) (a) Reductions in force required by reinstatement of an employee under Section
252 67-5-11, inadequate funds, change of workload, or lack of work shall be governed by a
253 retention roster to be maintained by the Office of the Attorney General and the requirements of
254 this Subsection (5).

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

257 (c) Retention points for each employee in a career service status shall be based on the
258 employee's seniority in service within each employee category in the Office of the Attorney
259 General, including any military service fulfilled subsequent to the employee's original
260 appointment.

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

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

264 (i) have retention points determined as if they were working for the office; and
265 (ii) be separated in the order of the retention points as if they were working in the
266 Office of the Attorney General.

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

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

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

273 Section 7. Section 67-5-13 is amended to read:

274 **67-5-13. Limitations on political activities by career service status employees.**

275 (1) An employee in a career service status may not, while in a pay status, be a state or

276 federal officer in any partisan political party organization or in any statewide partisan political
277 campaign. The employee, however, may be an officer or delegate in a partisan political party
278 organization at a county or inferior level or a delegate at a state or national level.

279 (2) An employee in career service status may not be a candidate for any partisan
280 political office, but upon application to the attorney general the employee shall be granted a
281 leave of absence without pay but without loss of existing seniority to participate in a partisan
282 political campaign either as an officer or as a candidate. Time spent during the political leave
283 shall not be counted for seniority purposes as being in service. For the purposes of this section,
284 an employee is not considered to be a candidate until the primary elections have been held.

285 (3) An employee in career service status may not engage in political activity during the
286 hours of employment, nor may any person solicit political contributions from any employee in
287 career service status during hours of employment or through state facilities or in any manner
288 impose assessments on them for political purposes; but nothing in this section shall preclude
289 voluntary contributions to a candidate or a political party.

290 (4) Partisan political activity shall not be a basis for employment, promotion,
291 demotion, or dismissal. Any violation of this section may lead to disciplinary action against
292 the employee, which may consist of reprimand, suspension, demotion, or termination as
293 determined by the attorney general.

294 (5) This section shall not be construed to permit partisan political activity by any
295 employee in career service status who is prevented or restricted from engaging in this political
296 activity by the provisions of any federal act or the rules and regulations promulgated under it.

297 **Section 8. Repealer.**

298 This bill repeals:

299 Section **67-5-6, Attorney General Career Service Act -- Citation.**

300 **Section 9. Effective date.**

301 If approved by two-thirds of all the members elected to each house, this bill takes effect
302 upon approval by the governor, or the day following the constitutional time limit of Utah
303 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
304 the date of veto override.