

Representative Kay J. Christofferson proposes the following substitute bill:

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 the 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.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 This bill provides revisor instructions.

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **67-5-201**, Utah Code Annotated 1953

34 **67-5-205**, Utah Code Annotated 1953

35 **67-5-206**, Utah Code Annotated 1953

36 RENUMBERS AND AMENDS:

37 **67-5-202**, (Renumbered from 67-5-7, as last amended by Laws of Utah 2021, Chapter
38 344)

39 **67-5-203**, (Renumbered from 67-5-8, as last amended by Laws of Utah 2012, Chapter
40 101)

41 **67-5-204**, (Renumbered from 67-5-9, as last amended by Laws of Utah 2007, Chapter
42 166)

43 **67-5-207**, (Renumbered from 67-5-10, as last amended by Laws of Utah 1994, Chapter
44 199)

45 **67-5-208**, (Renumbered from 67-5-11, as last amended by Laws of Utah 2021, Chapter
46 345)

47 **67-5-209**, (Renumbered from 67-5-12, as last amended by Laws of Utah 2012, Chapter
48 369)

49 **67-5-210**, (Renumbered from 67-5-13, as last amended by Laws of Utah 2007, Chapter
50 166)

51 REPEALS:

52 **67-5-6**, as enacted by Laws of Utah 1973, Chapter 185

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

55 Section 1. Section **67-5-201** is enacted to read:

56 **Part 2. Employees of the Office of the Attorney General**

57 67-5-201. Definitions.

58 As used in this part:

59 (1) "Career service exempt status" means the employment status of an employee who is
60 exempt from and not subject to the career service provisions of this part.

61 (2) "Career service status" means the employment status of an employee who is subject
62 to the career service provisions of this part.

63 (3) "Eligible employee" means an employee, except a POST-certified employee:

64 (a) who, on the effective date of this section, is employed in a position with career
65 service status; or

66 (b) (i) who was hired before the effective date of this section for a position with career
67 service status;

68 (ii) whose position is subject to a probationary period of service described in

69 Subsection 67-5-203(2)(a)(iii); and

70 (iii) who, on the effective date of this section, has not yet completed the probationary
71 period of service.

72 (4) "Employee" means an individual employed by the Office of the Attorney General.

73 (5) "Pay for performance plan" means a plan:

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

75 (b) that is established before work begins;

76 (c) under which specific goals and targets for the employee are determined and
77 measurement procedures are in place; and

78 (d) that includes features described in Subsection 67-5-206(2).

79 (6) "POST-certified employee" means an employee who:

80 (a) is employed in a position that requires the employee to have received the training
81 certification under Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act;

82 (b) received the training certification described in Subsection (6)(a); and

83 (c) maintains the training certification described in Subsection (6)(a) throughout the
84 time of the employee's employment in a position that requires the employee to have received
85 the training certification described in Subsection (6)(a).

86 Section 2. Section **67-5-202**, which is renumbered from Section 67-5-7 is renumbered
87 and amended to read:

88 ~~[67-5-7]~~. 67-5-202. Establishment of employment system.

89 (1) The purpose of this ~~[chapter]~~ part is to establish ~~[a career service]~~ an employment
90 system for employees of the Office of the Attorney General that will attract and retain
91 employees of proven ability and experience who will devote their full time to the service of the
92 state.

93 (2) The Office of the Attorney General may adopt policies necessary to implement this
94 ~~[chapter]~~ part, including personnel and work policies different from those made by the Division
95 of Human Resource Management.

96 Section 3. Section **67-5-203**, which is renumbered from Section 67-5-8 is renumbered
97 and amended to read:

98 ~~[67-5-8]~~. 67-5-203. Eligibility for career service status.

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

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

104 (2) (a) An employee of the Office of the Attorney General shall be ~~[placed in a]~~ granted
105 career service status if:

106 (i) the employee:

107 (A) was hired before the effective date of this section for a position with career service
108 status; and

109 (B) does not voluntarily elect to convert to career service exempt status under Section
110 67-5-205;

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

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

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

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

117 (b) An employee ~~[now]~~ employed by the ~~[attorney general's office in]~~ Office of the
118 Attorney General who has career service status may not be terminated under this ~~[chapter]~~ part

119 except for cause.

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

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

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

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

131 ~~[(d) The attorney general shall]~~

132 (ii) shall:

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

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

136 ~~[(e)] (d)~~ An employee terminated under ~~[this section]~~ Subsection (3)(c) has no appeal
 137 rights under this ~~[chapter]~~ part.

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

140 Section 4. Section **67-5-204**, which is renumbered from Section 67-5-9 is renumbered
 141 and amended to read:

142 ~~[67-5-9].~~ **67-5-204. Reassignment of career status employees -- Additional**
 143 **compensation for managerial assignments -- Employment of special assistant attorneys**
 144 **general -- Termination of employees -- Salary increases.**

145 (1) This [chapter] part does not affect the authority of the attorney general to:

146 (a) assign or reassign an employee with career service status to a different position on
 147 the attorney general's staff, subject to Subsection (2);

148 (b) develop a plan for additional compensation for a career service status employee
 149 who accepts a managerial assignment within the office, subject to Subsection (3);

150 ~~[(1) assign and reassign employees in a career status to different positions on his staff.~~
151 ~~The salary of an employee reassigned to a different position shall not be decreased by reason of~~
152 ~~reassignment, except that if the employee reassigned occupies the position of chief deputy~~
153 ~~attorney general, the salary may be reduced by not more than 15% upon the assignment to a~~
154 ~~different position;]~~

155 ~~[(2) develop a plan for additional compensation for career status employees who accept~~
156 ~~managerial assignments within the office. The provisions of Subsection (1) notwithstanding,~~
157 ~~the attorney general may discontinue any additional compensation if the employee no longer~~
158 ~~holds a managerial assignment. Additional compensation provided under this section shall be~~
159 ~~determined by the attorney general pursuant to the plan developed by the Office of the Attorney~~
160 ~~General. If the employee no longer holds a managerial assignment, and the attorney general~~
161 ~~decides to discontinue any additional compensation, the reduction may not place the employee~~
162 ~~at a salary below where the employee would be through normal salary increases if the~~
163 ~~employee had not been in a managerial position;]~~

164 ~~[(3)] (c) employ special assistant attorneys general[; who shall not be subject to this~~
165 ~~chapter;] to represent the state in particular lawsuits or to handle particular legal matters for the~~
166 ~~state, without being subject to this part;~~

167 ~~[(4)] (d) terminate the employment of any employee of the Office of the Attorney~~
168 ~~General [who is not in a] with career service exempt status; or~~

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

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

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

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

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

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

189 Section 5. Section **67-5-205** is enacted to read:

190 **67-5-205. Employees with career service status -- Election to convert to a career**
191 **service exempt status -- Adoption of policy for review process for career service exempt**
192 **status employees.**

193 (1) An employee who, on the effective date of this section, has career service status
194 maintains the career service status unless the employee voluntarily elects to convert to career
195 service exempt status before March 30, 2024.

196 (2) The attorney general shall disseminate to each eligible employee information on
197 financial and other incentives for the eligible employee's voluntary election to convert to career
198 service exempt status.

199 (3) (a) The attorney general may adopt a policy to implement a review process for an
200 employee with career service exempt status who is recommended to be suspended, demoted, or
201 dismissed from employment.

202 (b) The review process implemented in a policy adopted under Subsection (3)(a) may
203 consist of some or all of the grievance procedures provided in Chapter 19a, Grievance
204 Procedures.

205 Section 6. Section **67-5-206** is enacted to read:

206 **67-5-206. Pay for performance plan.**

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

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

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

210 (i) subject to Subsection (3)(b), the salary range of the position classified plan for the
211 employee's position; and

- 212 (ii) an increase, decrease, or no change in the employee's wage:
 213 (A) commensurate with an employee's performance as reflected by the evaluation
 214 conducted in accordance with the pay for performance plan; and
 215 (B) in an amount that is in accordance with the guidelines and criteria established for a
 216 wage change in the pay for performance plan.
- 217 (2) A pay for performance plan shall include:
 218 (a) guidelines and criteria for performance policies and to administer pay based on an
 219 employee's performance in furtherance of the mission of the Office of the Attorney General;
 220 (b) employee performance ratings;
 221 (c) requirements for written employee performance standards and expectations;
 222 (d) a provision for supervisor verbal and written feedback based on the standards of
 223 performance and behavior outlined in an employee's performance plan; and
 224 (e) a provision for the periodic evaluation of an employee's performance, no less
 225 frequently than annually, as established by the attorney general in the pay for performance plan.
- 226 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 227 attorney general shall make rules:
 228 (a) for the administration of a pay for performance plan; and
 229 (b) authorizing an employee with career service status to receive a wage that exceeds
 230 the salary range of the employee's career service status position if warranted based on the
 231 employee's performance rating.

232 Section 7. Section **67-5-207**, which is renumbered from Section 67-5-10 is renumbered
 233 and amended to read:

234 **[67-5-10]. 67-5-207. Career status attorneys as full-time employees --**
 235 **Completion of outside law practice.**

- 236 (1) (a) [Attorneys in a career status] An attorney with career service status:
 237 (b) shall be a full-time [employees and shall] employee;
 238 (c) may not engage in the private practice of law [and shall]; and
 239 (d) may not receive any fee for legal services rendered to any person, corporation,
 240 partnership, or other legal entity other than the state or the county in which the [person]
 241 attorney holds office or by whom the [person] attorney is employed.
 242 (e) The practice of law prohibited by [this subsection] Subsection (1)(a) does not

243 include pro bono service.

244 (2) (a) ~~[Attorneys]~~ An attorney on probationary status who ~~[have]~~ has not been granted
245 career service status may, in the discretion of the attorney general, be granted permission to
246 complete or handle legal matters previously begun before employment with the attorney
247 general's office, but may not begin new matters once employed.

248 (b) Once an attorney is granted career service status ~~[is conferred]~~, the attorney is
249 bound by the provisions of Subsection (1).

250 (3) ~~[The provisions of this section shall]~~ Subsections (1) and (2) do not apply to a
251 special assistant ~~[attorneys]~~ attorney general retained on a fee basis to render services in
252 connection with a single case or a related series of cases.

253 Section 8. Section **67-5-208**, which is renumbered from Section 67-5-11 is renumbered
254 and amended to read:

255 ~~[67-5-11].~~ **67-5-208. Employee accepting appointment to state position exempt**
256 **from merit provisions -- Reinstatement in career status.**

257 (1) (a) An employee ~~[in a]~~ with career service status ~~[accepting]~~ who accepts an
258 appointment to a position in state government ~~[which]~~ that is exempt from the merit provisions
259 of Title 63A, Chapter 17, Utah State Personnel Management Act, shall notify the attorney
260 general in writing.

261 (b) Upon termination of ~~[the]~~ an appointment under Subsection (1)(a), unless
262 discharged for cause, the employee, through written request of reinstatement made to the
263 attorney general within 30 days from the effective date of termination from the appointment,
264 shall be reinstated ~~[in a]~~ with career service status in the ~~[attorney general's office]~~ Office of the
265 Attorney General at a salary not less than ~~[that which he]~~ the salary that the employee was
266 receiving at the time of ~~[his]~~ the appointment, and the time spent in the other position shall be
267 credited toward seniority in the position with career service~~[- Reinstatement]~~ status.

268 (c) A reinstatement under Subsection (1)(b) shall be made no later than 60 days after
269 the written notification required ~~[by this Subsection (1)]~~ under Subsection (1)(b) or 60 days
270 after the effective date of termination from the employee's appointive position, whichever is
271 later.

272 (d) The position and assignment to which ~~[the employee shall return]~~ an employee
273 reinstated under Subsection (1)(b) shall be determined by the attorney general.

274 (2) (a) (i) The Office of the Attorney General shall establish and maintain a separate
275 seniority list for each employee category~~[, which categories]~~.

276 (ii) Categories established under Subsection (2)(a)(i) may include attorneys,
277 investigators, paralegals, secretaries, and others.

278 (b) An employee of the Office of the Attorney General with less seniority than an
279 employee in the same category entitled to be reinstated under this section holds his position
280 subject to any reinstatement provided by Subsection (1).

281 Section 9. Section ~~67-5-209~~, which is renumbered from Section 67-5-12 is renumbered
282 and amended to read:

283 ~~[67-5-12]~~. **67-5-209. Dismissal of career service status employees -- Causes --**
284 **Procedure -- Retention roster -- Reappointment register.**

285 (1) (a) ~~[Employees in a]~~ An employee with career service status may be dismissed
286 only:

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

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

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

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

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

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

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

295 (E) misfeasance, malfeasance, or nonfeasance;

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

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

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

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

304 (J) dishonesty; or

305 (K) misconduct.

306 (b) [~~Employees in~~] An employee with career service status may not be dismissed for
307 reasons of race, national origin, religion, or political affiliation.

308 (2) Except in aggravated cases of misconduct, an employee [~~in a~~] with career service
309 status may not be suspended, demoted, or dismissed without the following procedures:

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

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

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

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

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

322 (3) (a) An employee [~~in a~~] with career service status who is aggrieved by a decision of
323 the attorney general or a designated representative to suspend, demote, or dismiss the employee
324 may appeal the decision to the Career Service Review Office or its hearing officers by
325 following the procedures in Title 67, Chapter 19a, Grievance Procedures.

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

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

332 (5) (a) Reductions in force required by reinstatement of an employee under Section
333 [67-5-11](#), inadequate funds, change of workload, or lack of work shall be governed by a
334 retention roster to be maintained by the Office of the Attorney General and the requirements of
335 this Subsection (5).

336 (b) Except attorney general executive or administrative appointees, ~~[employees not in~~
337 ~~a]~~ an employee without career service status shall be separated before any employee ~~[in a]~~ with
338 career service status.

339 (c) Retention points for each employee ~~[in a]~~ with career service status shall be based
340 on the employee's seniority in service within each employee category in the Office of the
341 Attorney General, including any military service fulfilled subsequent to the employee's original
342 appointment.

343 (d) Employees ~~[in]~~ with career service status shall be separated in the order of ~~[their]~~
344 the employees' retention points, the employee with the lowest points to be discharged first.

345 (e) ~~[Those employees who are]~~ An employee serving in ~~[other positions]~~ another
346 position under Section ~~[67-5-11]~~ 57-5-208 shall:

347 (i) have retention points determined as if ~~[they]~~ the employee were working for the
348 ~~[office]~~ Office of the Attorney General; and

349 (ii) be separated in the order of the retention points as if ~~[they]~~ the employee were
350 working in the Office of the Attorney General.

351 (f) An employee ~~[in a]~~ with career service status who is separated by reason of a
352 reduction in force shall be:

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

355 (ii) offered reappointment to a position in the same category in the Office of the
356 Attorney General before any employee ~~[not having a]~~ without career service status is
357 appointed.

358 Section 10. Section **67-5-210**, which is renumbered from Section 67-5-13 is
359 renumbered and amended to read:

360 ~~[67-5-13]~~. **67-5-210. Limitations on political activities by career status**
361 **employees.**

362 (1) An employee ~~[in a]~~ with career service status:

363 (a) may not, while in a pay status, be a state or federal officer in any partisan political
364 party organization or in any statewide partisan political campaign~~[- The employee, however,];~~
365 and

366 (b) notwithstanding Subsection (1)(a), may be an officer or delegate in a partisan

367 political party organization at a county or inferior level or a delegate at a state or national level.

368 (2) (a) ~~Am~~ Except as provided in Subsection (2)(b), an employee ~~in~~ with career
369 service status may not be a candidate for any partisan political office~~[-but upon]~~.

370 (b) (i) Upon application to the attorney general ~~the~~ an employee shall be granted a
371 leave of absence without pay ~~but~~ and without loss of existing seniority to participate in a
372 partisan political campaign either as an officer or as a candidate.

373 (ii) Time spent during ~~the~~ political leave ~~shall~~ under Subsection (2)(b)(i) may not be
374 counted for seniority purposes as being in service.

375 (iii) For the purposes of this section, an employee is not considered to be a candidate
376 until the primary elections have been held.

377 (3) (a) An employee ~~in~~ with career service status may not engage in political activity
378 during the hours of employment, nor may any person solicit political contributions from any
379 employee ~~in~~ with career service status during hours of employment or through state facilities
380 or in any manner impose assessments on ~~them~~ the employee for political purposes~~[-but~~
381 nothing].

382 (b) Nothing in this section ~~[shall preclude voluntary contributions]~~ precludes a
383 voluntary contribution to a candidate or a political party.

384 (4) (a) Partisan political activity ~~shall~~ may not be a basis for employment, promotion,
385 demotion, or dismissal.

386 (b) Any violation of this section may lead to disciplinary action against the employee,
387 which may consist of reprimand, suspension, demotion, or termination as determined by the
388 attorney general.

389 (5) This section ~~shall~~ may not be construed to permit partisan political activity by any
390 employee ~~in~~ with career service status who is prevented or restricted from engaging in this
391 political activity by the provisions of any federal ~~act~~ law or the rules and regulations
392 promulgated under ~~it~~ the federal law.

393 Section 11. **Repealer.**

394 This bill repeals:

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

396 Section 12. **Effective date.**

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

398 upon approval by the governor, or the day following the constitutional time limit of Utah
399 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
400 the date of veto override.

401 Section 13. **Revisor instructions.**

402 The Legislature intends that the Office of Legislative Research and General Counsel, in
403 preparing the Utah Code database for publication, replace any reference in this bill to "the
404 effective date of this section" with the actual effective date of this bill.