

DIVISION OF HUMAN RESOURCE MANAGEMENT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: Heidi Balderree

LONG TITLE

General Description:

This bill modifies provisions of the Utah State Personnel Management Act.

Highlighted Provisions:

This bill:

- provides that the director of the Division of Human Resource Management (DHRM) is the chief human resources officer for the state executive branch;

- eliminates the requirement that the director of DHRM provide charter schools and political subdivisions with training and advice on human resource management;

- for purposes of the state's pay for performance policy, provides that an employee does not include an individual who is ineligible to receive a state retirement benefit or who is in a time-limited position lasting less than 12 months;

- clarifies the purpose of the state's pay for performance policy;

- permits an agency to file a request with DHRM:

- to keep a competitive career service position scheduled as a competitive career service position; or

- to reschedule a non-competitive career service position as a competitive career service position;

- clarifies the process for an agency's demotion or dismissal of a career service employee;

- clarifies language regarding compensation for overtime and an employee's regular hourly wage; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63A-17-102**, as last amended by Laws of Utah 2022, Chapter 209

32 **63A-17-105**, as renumbered and amended by Laws of Utah 2021, Chapter 344

33 **63A-17-106**, as last amended by Laws of Utah 2022, Chapters 166, 169, 177, and 209

34 **63A-17-112**, as enacted by Laws of Utah 2022, Chapter 209

35 **63A-17-301**, as last amended by Laws of Utah 2022, Chapter 209

36 **63A-17-304**, as last amended by Laws of Utah 2022, Chapter 169

37 **63A-17-306**, as last amended by Laws of Utah 2022, Chapter 169

38 **63A-17-502**, as last amended by Laws of Utah 2022, Chapter 447

39

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

41 Section 1. Section **63A-17-102** is amended to read:

42 **63A-17-102 . Definitions.**

43 As used in this chapter:

- 44 (1) "Agency" means any department or unit of Utah state government with authority to
45 employ personnel.
- 46 (2) "Career service" means positions under schedule B as defined in Section 63A-17-301.
- 47 (3) "Career service employee" means an employee who has successfully completed a
48 probationary period of service in a position covered by the career service.
- 49 (4) "Career service status" means status granted to employees who successfully complete
50 probationary periods for competitive career service positions.
- 51 (5) "Classified service" means those positions subject to the classification and
52 compensation provisions of Section 63A-17-307.
- 53 (6) "Controlled substance" means controlled substance as defined in Section 58-37-2.
- 54 (7) (a) "Demotion" means a disciplinary action resulting in a reduction of an employee's
55 current actual wage.
- 56 (b) "Demotion" does not mean:
- 57 (i) a nondisciplinary movement of an employee to another position without a
58 reduction in the current actual wage; or
- 59 (ii) a reclassification of an employee's position under the provisions of Subsection
60 63A-17-307(3) and rules made by the department.
- 61 (8) "Director" means the director of the division.

- 62 (9) "Disability" means a physical or mental disability as defined and protected under the
63 Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.
- 64 (10) "Division" means the Division of Human Resource Management, created in Section
65 63A-17-105.
- 66 (11) "Employee" means any individual in a paid status covered by the career service or
67 classified service provisions of this chapter.
- 68 (12) "Examining instruments" means written or other types of proficiency tests.
- 69 (13) "Human resource function" means those duties and responsibilities specified:
70 (a) under Section 63A-17-106;
71 (b) under rules of the division; and
72 (c) under other state or federal statute.
- 73 (14) "Market comparability adjustment" means a salary range adjustment determined
74 necessary through a market survey of salary data and other relevant information.
- 75 (15) "Probationary employee" means an employee serving a probationary period in a career
76 service position but who does not have career service status.
- 77 (16) "Probationary period" means that period of time determined by the division that an
78 employee serves in a career service position as part of the hiring process before career
79 service status is granted to the employee.
- 80 (17) "Probationary status" means the status of an employee between the employee's hiring
81 and the granting of career service status.
- 82 (18) "Structure adjustment" means a division modification of salary ranges.
- 83 (19) "Temporary employee" means a career service exempt [~~employees~~] employee
84 described in Subsection 63A-17-301(1)(r).
- 85 (20) "Total compensation" means salaries and wages, bonuses, paid leave, group insurance
86 plans, retirement, and all other benefits offered to state employees as inducements to
87 work for the state.

88 Section 2. Section **63A-17-105** is amended to read:

89 **63A-17-105 . Division of Human Resource Management created -- Director --**
90 **Chief Human Resources Officer -- Staff.**

91 (1) There is created within the department, the Division of Human Resource Management.

92 (2) [~~(a)~~] The division shall be administered by a director appointed by the executive
93 director, with the approval of the governor.

94 [~~(b)~~] (3) The director shall:

95 (a) be a person with experience in human resource management [~~and shall be~~];

- 96 (b) be accountable to the executive director for the director's performance in office[-] ;
 97 (c) serve as the chief human resource officer for the state executive branch; and
 98 ~~(3)~~ (d) [The director shall] advise the governor on human resource matters and policies.

99 Section 3. Section **63A-17-106** is amended to read:

100 **63A-17-106 . Responsibilities of the director.**

- 101 (1) As used in this section, "miscarriage" means the spontaneous or accidental loss of a
 102 fetus, regardless of gestational age or the duration of the pregnancy.
- 103 (2) The director shall have full responsibility and accountability for the administration of
 104 the statewide human resource management system.
- 105 (3) Except as provided in Section 63A-17-201, an agency may not perform human resource
 106 functions without the consent of the director.
- 107 (4) Statewide human resource management rules made by the division in accordance with
 108 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall take precedence if
 109 there is a conflict with agency rules, policies, or practices.
- 110 (5) The division may operate as an internal service fund agency in accordance with Section
 111 63J-1-410 for the human resource functions the division provides.
- 112 (6) The director shall:
- 113 (a) develop, implement, and administer a statewide program of human resource
 114 management that will:
- 115 (i) aid in the efficient execution of public policy;
- 116 (ii) foster careers in public service for qualified employees; and
- 117 (iii) render assistance to state agencies in performing their missions;
- 118 (b) design and administer the state pay plan;
- 119 (c) design and administer the state classification system and procedures for determining
 120 schedule assignments;
- 121 (d) design and administer the state recruitment and selection system;
- 122 (e) administer agency human resource practices and ensure compliance with federal law,
 123 state law, and state human resource rules, including equal employment opportunity;
- 124 (f) consult with agencies on decisions concerning employee corrective action and
 125 discipline;
- 126 (g) maintain central personnel records;
- 127 (h) perform those functions necessary to implement this chapter unless otherwise
 128 assigned or prohibited;
- 129 (i) perform duties assigned by the governor, executive director, or statute;

- 130 (j) make rules for human resource management, in accordance with Title 63G, Chapter
 131 3, Utah Administrative Rulemaking Act;
- 132 (k) establish and maintain a management information system that will furnish the
 133 governor, the Legislature, and agencies with current information on authorized
 134 positions, payroll, and related matters concerning state human resources;
- 135 (l) conduct research and planning activities to:
- 136 (i) determine and prepare for future state human resource needs;
- 137 (ii) develop methods for improving public human resource management; and
- 138 (iii) propose needed policy changes to the governor;
- 139 (m) study the character, causes, and extent of discrimination in state employment and
 140 develop plans for its elimination through programs consistent with federal and state
 141 laws governing equal employment opportunity in employment;
- 142 ~~[(n) when requested by charter schools or counties, municipalities, and other political
 143 subdivisions of the state, provide technical service, training recommendations, or
 144 advice on human resource management at a charge determined by the director;]~~
- 145 ~~[(o)]~~ (n) establish compensation policies and procedures for early voluntary retirement;
- 146 ~~[(p)]~~ (o) confer with the heads of other agencies about human resource policies and
 147 procedures;
- 148 ~~[(q)]~~ (p) submit an annual report to the executive director, the governor, and the
 149 Legislature; and
- 150 ~~[(r)]~~ (q) assist with the development of a vacant position report required under
 151 Subsection 63J-1-201(2)(b)(vi).
- 152 (7) (a) After consultation with the executive director, the governor, and the heads of
 153 other agencies, the director shall establish and coordinate statewide training
 154 programs, including training described in Subsection (7)(e).
- 155 (b) The programs developed under this Subsection (7) shall have application to more
 156 than one agency.
- 157 (c) The division may not establish training programs that train employees to perform
 158 highly specialized or technical jobs and tasks.
- 159 (d) The division shall ensure that any training program described in this Subsection (7)
 160 complies with Title 63G, Chapter 22, State Training and Certification Requirements.
- 161 (e) (i) As used in this Subsection (7)(e):
- 162 (A) "Employee" means the same as that term is defined in Section 63A-17-112.
- 163 (B) "Supervisor" means an individual in a position at an agency, as defined in

- 164 Section 63A-17-112, that requires the regular supervision and performance
165 evaluation of an employee.
- 166 (ii) A supervisor shall attend the training:
- 167 (A) within six months of being promoted or hired to the position of supervisor; and
168 (B) at least annually.
- 169 (iii) [~~Training attendance and the~~] A supervisor's completion of training and effective
170 use of training information and principles shall be considered in an evaluation of [a]
171 the supervisor's job performance.
- 172 (iv) The training shall include:
- 173 (A) effective employee management and evaluation methods based on the pay for
174 performance management system described in Section 63A-17-112;
175 (B) instruction to improve supervisor and employee communications;
176 (C) best practices for recognizing and retaining high-performing employees;
177 (D) best practices for addressing poor-performing employees; and
178 (E) any other information and principles identified by the division to improve
179 management or organizational effectiveness.
- 180 (8) (a) (i) The division may collect fees for training as authorized by this Subsection
181 (8).
- 182 (ii) Training funded from General Fund appropriations shall be treated as a separate
183 program within the department budget.
- 184 (iii) All money received from fees under this section will be accounted for by the
185 department as a separate user driven training program.
- 186 (iv) The user training program includes the costs of developing, procuring, and
187 presenting training and development programs, and other associated costs for
188 these programs.
- 189 (b) (i) Funds remaining at the end of the fiscal year in the user training program are
190 nonlapsing.
- 191 (ii) Each year, as part of the appropriations process, the Legislature shall review the
192 amount of nonlapsing funds remaining at the end of the fiscal year and may, by
193 statute, require the department to lapse a portion of the funds.
- 194 (9) Rules described in Subsection (6)(j) shall provide for at least three work days of paid
195 bereavement leave for an employee:
- 196 (a) following the end of the employee's pregnancy by way of miscarriage or stillbirth; or
197 (b) following the end of another individual's pregnancy by way of a miscarriage or

- 198 stillbirth, if:
- 199 (i) the employee is the individual's spouse or partner;
- 200 (ii) (A) the employee is the individual's former spouse or partner; and
- 201 (B) the employee would have been a biological parent of a child born as a result of
- 202 the pregnancy;
- 203 (iii) the employee provides documentation to show that the individual intended for
- 204 the employee to be an adoptive parent, as that term is defined in Section
- 205 78B-6-103, of a child born as a result of the pregnancy; or
- 206 (iv) under a valid gestational agreement in accordance with Title 78B, Chapter 15,
- 207 Part 8, Gestational Agreement, the employee would have been a parent of a child
- 208 born as a result of the pregnancy.

209 Section 4. Section **63A-17-112** is amended to read:

210 **63A-17-112 . Pay for performance management system -- Employees paid for**

211 **performance.**

212 (1) As used in this section:

213 (a) (i) "Agency" means, except as provided in Subsection (1)(a)(ii), the same as that

214 term is defined in Section 63A-17-102.

215 (ii) "Agency" does not include the State Board of Education, the Office of the State

216 Treasurer, Office of the State Auditor, Office of the State Attorney General, Utah

217 System of Higher Education, the Legislature, the judiciary, or, as defined in

218 Section 63E-1-102, an independent entity.

219 (b) (i) "Employee" means an employee of an agency.

220 (ii) "Employee" does not include ~~[an individual in a schedule AB, as described in~~

221 ~~Section 63A-17-301, position.] :~~

222 (A) an individual in a schedule AB position, as described in Section 63A-17-301;

223 (B) an individual in a position that is not eligible to receive a retirement benefit

224 under Title 49, Utah State Retirement and Insurance Benefit Act; or

225 (C) an individual that an agency hires for a time-limited position that will last

226 fewer than 12 consecutive months.

227 (c) "Pay for performance" means a plan for incentivizing an employee ~~[for meeting or~~

228 ~~exceeding]~~ to meet or exceed production or performance goals, in which the plan is

229 well-defined before work begins, ~~[eligible work groups are defined,]~~ specific goals

230 and targets for the employee are determined, and measurement procedures are in place~~[~~

231 ~~, and specific incentives are provided when goals and targets are met].~~

- 232 (d) "Pay for performance management system" means the system described in
233 Subsection (2).
- 234 (2) The division shall establish and, in accordance with Title 63G, Chapter 3, Utah
235 Administrative Rulemaking Act, make rules for the administration of a pay for
236 performance management system.
- 237 (3) The pay for performance management system shall include:
- 238 (a) guidelines and criteria for an agency to adopt pay for performance policies and
239 administer pay based on an employee's performance in furtherance of the agency's
240 mission;
- 241 (b) employee performance ratings;
- 242 (c) requirements for written employee performance standards and expectations;
- 243 (d) supervisor verbal and written feedback based on the standards of performance and
244 behavior outlined in an employee's performance plan; and
- 245 (e) quarterly written evaluation of an employee's performance.
- 246 (4) In consultation with the division, no later than July 1, 2023, each agency shall:
- 247 (a) adopt pay for performance policies based on the performance management system;
248 and
- 249 (b) subject to available funds and as necessary, adjust an employee's wage to reflect:
- 250 (i) subject to Subsection (5), for a classified service employee, the salary range of the
251 position classified plan for the employee's position; and
- 252 (ii) an increase, decrease, or no change in the employee's wage:
- 253 (A) commensurate to an employee's performance as reflected by the employee's
254 evaluation conducted in accordance with the pay for performance management
255 system; and
- 256 (B) in an amount that is in accordance with the guidelines and criteria established
257 for a wage change in the pay for performance management system.
- 258 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
259 division shall make rules authorizing a classified service employee to receive a wage
260 that exceeds the salary range of the classified service employee's position classified plan
261 if warranted based on the classified employee's performance rating.

262 Section 5. Section **63A-17-301** is amended to read:

263 **63A-17-301 . Career service -- Exempt positions -- Schedules for civil service**
264 **positions -- Coverage of career service provisions.**

- 265 (1) Except as provided in Subsection (3)(d), the following positions are exempt from the

- 266 career service provisions of this chapter and are designated under the following
267 schedules:
- 268 (a) schedule AA includes the governor, members of the Legislature, and all other elected
269 state officers;
 - 270 (b) schedule AB includes appointed executives and board or commission executives
271 enumerated in Section 67-22-2;
 - 272 (c) schedule AC includes all employees and officers in:
 - 273 (i) the office and at the residence of the governor;
 - 274 (ii) the Public Lands Policy Coordinating Office;
 - 275 (iii) the Office of the State Auditor; and
 - 276 (iv) the Office of the State Treasurer;
 - 277 (d) schedule AD includes employees who:
 - 278 (i) are in a confidential relationship to an agency head or commissioner; and
 - 279 (ii) report directly to, and are supervised by, a department head, commissioner, or
280 deputy director of an agency or its equivalent;
 - 281 (e) schedule AE includes each employee of the State Board of Education that the State
282 Board of Education designates as exempt from the career service provisions of this
283 chapter;
 - 284 (f) schedule AG includes employees in the Office of the Attorney General who are under
285 their own career service pay plan under Sections 67-5-7 through 67-5-13;
 - 286 (g) schedule AH includes:
 - 287 (i) teaching staff of all state institutions; and
 - 288 (ii) employees of the Utah Schools for the Deaf and the Blind who are:
 - 289 (A) educational interpreters as classified by the division; or
 - 290 (B) educators as defined by Section 53E-8-102;
 - 291 (h) schedule AN includes employees of the Legislature;
 - 292 (i) schedule AO includes employees of the judiciary;
 - 293 (j) schedule AP includes all judges in the judiciary;
 - 294 (k) schedule AQ includes:
 - 295 (i) members of state and local boards and councils appointed by the governor and
296 governing bodies of agencies;
 - 297 (ii) a water commissioner appointed under Section 73-5-1;
 - 298 (iii) other local officials serving in an ex officio capacity; and
 - 299 (iv) officers, faculty, and other employees of state universities and other state

- 300 institutions of higher education;
- 301 (l) schedule AR includes employees in positions that involve responsibility:
- 302 (i) for determining policy;
- 303 (ii) for determining the way in which a policy is carried out; or
- 304 (iii) of a type not appropriate for career service, as determined by the agency head
- 305 with the concurrence of the director;
- 306 (m) schedule AS includes any other employee:
- 307 (i) whose appointment is required by statute to be career service exempt;
- 308 (ii) whose agency is not subject to this chapter; or
- 309 (iii) whose agency has authority to make rules regarding the performance,
- 310 compensation, and bonuses for its employees;
- 311 (n) schedule AT includes employees of the Division of Technology Services, designated
- 312 as executive/professional positions by the director of the Division of Technology
- 313 Services with the concurrence of the director of the division;
- 314 (o) schedule AU includes patients and inmates employed in state institutions;
- 315 (p) employees of the Department of Workforce Services, designated as schedule AW:
- 316 (i) who are temporary employees that are federally funded and are required to work
- 317 under federally qualified merit principles as certified by the director; or
- 318 (ii) for whom substantially all of their work is repetitive, measurable, or transaction
- 319 based, and who voluntarily apply for and are accepted by the Department of
- 320 Workforce Services to work in a pay for performance program designed by the
- 321 Department of Workforce Services with the concurrence of the director of the
- 322 division;
- 323 (q) subject to Subsection (6), schedule AX includes employees in positions that:
- 324 (i) require the regular supervision and performance evaluation of one or more other
- 325 employees; and
- 326 (ii) are not designated exempt from career service under any other schedule described
- 327 in this Subsection (1); and
- 328 (r) for employees in positions that are temporary, seasonal, time limited, funding limited,
- 329 or variable hour in nature, under schedule codes and parameters established by the
- 330 division by administrative rule.
- 331 (2) The civil service shall consist of two schedules as follows:
- 332 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).
- 333 (ii) Removal from any appointive position under schedule A, unless otherwise

334 regulated by statute, is at the pleasure of the appointing officers without regard to
335 tenure.

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

337 (i) all positions filled through competitive selection procedures as defined by the
338 director; or

339 (ii) positions filled through a division approved on-the-job examination intended to
340 appoint a qualified person with a disability, or a veteran in accordance with Title
341 71A, Chapter 2, Veterans Preference.

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

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

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

349 (d) (i) An agency may file ~~[with the division a request]~~ a request with the division.

350 (A) to keep a position scheduled as a schedule B position as a schedule B position;
351 or

352 (B) to reschedule a position that ~~[would otherwise be]~~ is scheduled as a schedule A
353 position as a schedule B position.

354 (ii) The division shall review a request filed under Subsection (3)(d)(i) and approve
355 the request only if the exception is necessary to conform to a requirement imposed
356 as a condition precedent to receipt of federal funds or grant of a tax benefit under
357 federal law.

358 (4) (a) Compensation for employees of the Legislature shall be established by the
359 directors of the legislative offices in accordance with Section 36-12-7.

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

362 (c) Compensation for officers, faculty, and other employees of state universities and
363 institutions of higher education shall be established as provided in Title 53B, Chapter
364 1, Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2,
365 Institutions of Higher Education.

366 (d) Unless otherwise provided by law, compensation for all other schedule A employees
367 shall be established by their appointing authorities, within ranges approved by, and

- 368 after consultation with the director.
- 369 (5) An employee who is in a position designated schedule AC and who holds career service
370 status on June 30, 2010, shall retain the career service status if the employee:
- 371 (a) remains in the position that the employee is in on June 30, 2010; and
372 (b) does not elect to convert to career service exempt status in accordance with a rule
373 made by the division.
- 374 (6) (a) An employee who is hired for a schedule AX position on or after July 1, 2022, is
375 exempt from career service status.
- 376 (b) An employee who before July 1, 2022, is a career service employee employed in a
377 schedule B position that is rescheduled to a schedule AX position on July 1, 2022,
378 shall maintain the employee's career service status for the duration of the employee's
379 employment in the same position unless the employee voluntarily converts to career
380 service exempt status before July 1, 2023.
- 381 (c) (i) Subject to Subsection (6)(c)(ii), an employee is exempt from career service
382 status if:
- 383 (A) before July 1, 2022, the employee was a probationary employee in a schedule
384 B position and had not completed the probationary period; and
385 (B) on July 1, 2022, the schedule B position in which the probationary employee
386 is employed is rescheduled as a scheduled AX position.
- 387 (ii) An employee described in Subsection (6)(c)(i):
- 388 (A) is not a probationary employee on or after July 1, 2022; and
389 (B) is exempt from career service status on and after July 1, 2022, unless the
390 employee changes employment to a schedule B position.
- 391 (d) The division shall disseminate to each employee described in Subsection (6)(b)
392 information on financial and other incentives for voluntary conversion to
393 career-service exempt status.
- 394 (e) An agency, as defined in Section 63A-17-112, may adopt a policy, created in
395 consultation with the division, for agency review of recommendations that schedule
396 AX employees be suspended, demoted, or dismissed from employment.
- 397 Section 6. Section **63A-17-304** is amended to read:
- 398 **63A-17-304 . Promotion -- Reclassification -- Market adjustment.**
- 399 (1) (a) If an employee is promoted or the employee's position is reclassified to a higher
400 salary range maximum, the agency shall place the [employee] employee's salary
401 within the new range of the position.

- 402 (b) An agency may not set an employee's salary:
- 403 (i) higher than the maximum in the new salary range; or
- 404 (ii) lower than the minimum in the new salary range of the position.
- 405 (2) An agency shall adjust the salary range for an employee whose salary range is approved
- 406 by the Legislature for a market comparability adjustment consistent with Subsection
- 407 63A-17-307(5)(b)(i):
- 408 (a) at the beginning of the next fiscal year; and
- 409 (b) consistent with appropriations made by the Legislature.
- 410 (3) Division-initiated revisions in the state classification system that result in consolidation
- 411 or reduction of class titles or broadening of pay ranges:
- 412 (a) may not be regarded as a reclassification of the position or promotion of the
- 413 employee; and
- 414 (b) are exempt from the provisions of Subsection (1).
- 415 Section 7. Section **63A-17-306** is amended to read:
- 416 **63A-17-306 . Dismissals and demotions -- Grounds -- Disciplinary action --**
- 417 **Procedure -- Reductions in force.**
- 418 (1) A career service employee may be dismissed or demoted:
- 419 (a) to advance the good of the public service; or
- 420 (b) for just [causes] cause, including inefficiency, incompetency, failure to maintain
- 421 skills or adequate performance levels, insubordination, disloyalty to the orders of a
- 422 superior, misfeasance, malfeasance, or nonfeasance in office.
- 423 (2) An employee may not be dismissed because of race, sex, age, disability, national origin,
- 424 religion, political affiliation, or other nonmerit factor including the exercise of rights
- 425 under this chapter.
- 426 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 427 director shall make rules governing the procedural and documentary requirements of
- 428 disciplinary dismissals and demotions.
- 429 (4) If an agency head finds that a career service employee is charged with aggravated
- 430 misconduct or that retention of a career service employee would endanger the peace and
- 431 safety of others or pose a grave threat to the public interest, the employee may be
- 432 suspended pending the administrative appeal to the department head as provided in
- 433 Subsection (5).
- 434 (5) ~~[(a) A] An agency head may not demote or dismiss a career service employee [may~~
- 435 ~~not be demoted or dismissed unless the department head or designated representative~~

- 436 ~~has complied with this subsection.] unless:~~
- 437 ~~[(b)] (a) [The department] the agency head or the designated representative of the agency~~
 438 ~~head notifies the employee in writing of the [reasons] reason for the dismissal or~~
 439 ~~demotion[-] ;~~
- 440 ~~[(e)] (b) [The] the employee [has no less than] is given five working days to submit a~~
 441 ~~written reply to the agency head and to have the reply considered by the [department]~~
 442 ~~agency head[-] ;~~
- 443 ~~[(d)] (c) [The] the employee [has an] is given an opportunity to be heard by the [~~
 444 ~~department] agency head or the designated representative[-] of the agency head; and~~
- 445 ~~[(e)] (d) [Following the hearing, the employee may be dismissed or demoted if the~~
 446 ~~department] after completing the procedural requirements described in Subsections~~
 447 ~~(5)(a) through (c), the agency head finds adequate cause or reason[-] to demote or~~
 448 ~~dismiss the employee.~~
- 449 (6) (a) Reductions in force required by inadequate funds, change of workload, or lack of
 450 work are governed by retention points established by the director.
- 451 (b) Under those circumstances:
- 452 (i) The agency head shall designate the category of work to be eliminated, subject to
 453 review by the director.
- 454 (ii) Temporary and probationary employees shall be separated before any career
 455 service employee.
- 456 (iii) (A) When more than one career service employee is affected, the employees
 457 shall be separated in the order of their retention points, the employee with the
 458 lowest points to be discharged first.
- 459 (B) Retention points for each career service employee shall be computed
 460 according to rules established by the director, allowing appropriate
 461 consideration for proficiency and seniority in state government, including any
 462 active duty military service fulfilled subsequent to original state appointment.
- 463 (c) (i) A career service employee who is separated in a reduction in force under this
 464 section shall be given preferential consideration when applying for a career
 465 service position.
- 466 (ii) Preferential consideration under Subsection (6)(c)(i) applies only until the former
 467 career service employee accepts a career service position.
- 468 (iii) The director shall make rules in accordance with Title 63G, Chapter 3, Utah
 469 Administrative Rulemaking Act, concerning the manner of granting preferential

- 470 consideration under Subsection (6)(c)(i).
- 471 (d) (i) An employee separated due to a reduction in force may appeal to the
472 department head for an administrative review.
- 473 (ii) The notice of appeal must be submitted within 20 working days after the
474 employee's receipt of written notification of separation.
- 475 (iii) The employee may appeal the decision of the department head according to the
476 grievance and appeals procedure of this chapter and Title 67, Chapter 19a,
477 Grievance Procedures.

478 Section 8. Section **63A-17-502** is amended to read:

479 **63A-17-502 . Overtime policies for state employees.**

- 480 (1) As used in this section:
- 481 (a) "Accrued overtime hours" means:
- 482 (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the
483 end of the fiscal year, have not been paid and have not been taken as time off by
484 the nonexempt state employee who accrued them; and
- 485 (ii) for exempt employees, overtime hours earned during an overtime year.
- 486 (b) "Appointed official" means:
- 487 (i) each department executive director and deputy director, each division director, and
488 each member of a board or commission; and
- 489 (ii) any other person employed by a department who is appointed by, or whose
490 appointment is required by law to be approved by, the governor and who:
- 491 (A) is paid a salary by the state; and
- 492 (B) who exercises managerial, policy-making, or advisory responsibility.
- 493 (c) "Department" means the Department of Government Operations, the Department of
494 Corrections, the Department of Financial Institutions, the Department of Alcoholic
495 Beverage Services, the Insurance Department, the Public Service Commission, the
496 Labor Commission, the Department of Agriculture and Food, the Department of
497 Human Services, the Department of Natural Resources, the Department of
498 Transportation, the Department of Commerce, the Department of Workforce
499 Services, the State Tax Commission, the Department of Cultural and Community
500 Engagement, the Department of Health, the National Guard, the Department of
501 Environmental Quality, the Department of Public Safety, the Commission on
502 Criminal and Juvenile Justice, all merit employees except attorneys in the Office of
503 the Attorney General, merit employees in the Office of the State Treasurer, merit

504 employees in the Office of the State Auditor, Department of Veterans and Military
505 Affairs, and the Board of Pardons and Parole.

506 (d) "Elected official" means any person who is an employee of the state because the
507 person was elected by the registered voters of Utah to a position in state government.

508 (e) "Exempt employee" means a state employee who is exempt as defined by the Fair
509 Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

510 (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

511 (g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards Act
512 of 1978, 29 U.S.C. Sec. 201 et seq., by which a nonexempt employee elects the form
513 of compensation the nonexempt employee will receive for overtime.

514 (h) "Nonexempt employee" means a state employee who is nonexempt as defined by the
515 division applying FLSA requirements.

516 (i) "Overtime" means actual time worked in excess of the employee's defined work
517 period.

518 (j) "Overtime year" means the year determined by a department under Subsection (4)(b)
519 at the end of which an exempt employee's accrued overtime lapses.

520 (k) "State employee" means every person employed by a department who is not:

521 (i) an appointed official;

522 (ii) an elected official; or

523 (iii) a member of a board or commission who is paid only for per diem or travel
524 expenses.

525 (l) "Uniform annual date" means the date when an exempt employee's accrued overtime
526 lapses.

527 (m) "Work period" means:

528 (i) for all nonexempt employees, except law enforcement and hospital employees, a
529 consecutive seven day 24 hour work period of 40 hours;

530 (ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and

531 (iii) for nonexempt law enforcement and hospital employees, the period established
532 by each department by rule for those employees according to the requirements of
533 the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

534 (2) Each department shall compensate each state employee who works overtime by
535 complying with the requirements of this section.

536 (3) (a) Each department shall negotiate and obtain a signed FLSA agreement from each
537 nonexempt employee.

- 538 (b) In the FLSA agreement, the nonexempt employee shall elect either to be
539 compensated for overtime by:
- 540 (i) taking time off work at the rate of one and one-half hour off for each overtime
541 hour worked; or
- 542 (ii) being paid for the overtime worked at the rate of one and one-half times [~~the rate~~
543 ~~per hour that the state employee receives for nonovertime work~~] the employee's
544 regular hourly wage.
- 545 (c) Any nonexempt employee who elects to take time off under this Subsection (3) shall
546 be paid for any overtime worked in excess of the cap established by the division.
- 547 (d) Before working any overtime, each nonexempt employee shall obtain authorization
548 to work overtime from the employee's immediate supervisor.
- 549 (e) Each department shall:
- 550 (i) for employees who elect to be compensated with time off for overtime, allow
551 overtime earned during a fiscal year to be accumulated; and
- 552 (ii) for employees who elect to be paid for overtime worked, pay them for overtime
553 worked in the paycheck for the pay period in which the employee worked the
554 overtime.
- 555 (f) If a department pays a nonexempt employee for overtime, that department shall
556 charge that payment to that department's budget.
- 557 (g) At the end of each fiscal year, the Division of Finance shall total all the accrued
558 overtime hours for nonexempt employees and charge that total against the
559 appropriate fund or subfund.
- 560 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each department shall
561 compensate exempt employees who work overtime by granting them time off at
562 the rate of one hour off for each hour of overtime worked.
- 563 (ii) The director of the division may grant limited exceptions to [~~this requirement~~] the
564 compensation requirement described in Subsection (4)(a)(i), where work
565 circumstances dictate, by authorizing a department to pay [~~employees~~] an exempt
566 employee for overtime worked at the [~~rate per hour that the employee receives for~~
567 ~~nonovertime work,~~] employee's regular hourly wage if that department has funds
568 available.
- 569 (b) (i) Each department shall:
- 570 (A) establish in its written human resource policies a uniform annual date for each
571 division that is at the end of any pay period; and

- 572 (B) communicate the uniform annual date to its employees.
- 573 (ii) If any department fails to establish a uniform annual date as required by this
574 Subsection (4), the director of the division, in conjunction with the director of the
575 Division of Finance, shall establish the date for that department.
- 576 (c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a
577 benefit, and is not a vested right.
- 578 (ii) A court may not construe the overtime for exempt employees authorized by this
579 Subsection (4) as an entitlement, a benefit, or as a vested right.
- 580 (d) At the end of the overtime year, upon transfer to another department at any time, and
581 upon termination, retirement, or other situations where the employee will not return
582 to work before the end of the overtime year:
- 583 (i) any of an exempt employee's overtime that is more than the maximum established
584 by division rule lapses; and
- 585 (ii) unless authorized by the director of the division under Subsection (4)(a)(ii), a
586 department may not compensate the exempt employee for that lapsed overtime by
587 paying the employee for the overtime or by granting the employee time off for the
588 lapsed overtime.
- 589 (e) Before working any overtime, each exempt employee shall obtain authorization to
590 work overtime from the exempt employee's immediate supervisor.
- 591 (f) If a department pays an exempt employee for overtime under authorization from the
592 director of the division, that department shall charge that payment to that
593 department's budget in the pay period earned.
- 594 (5) The division shall:
- 595 (a) ensure that the provisions of the FLSA and this section are implemented throughout
596 state government;
- 597 (b) determine, for each state employee, whether that employee is exempt, nonexempt,
598 law enforcement, or has some other status under the FLSA;
- 599 (c) in coordination with modifications to the systems operated by the Division of
600 Finance, make rules:
- 601 (i) establishing procedures for recording overtime worked that comply with FLSA
602 requirements;
- 603 (ii) establishing requirements governing overtime worked while traveling and
604 procedures for recording that overtime that comply with FLSA requirements;
- 605 (iii) establishing requirements governing overtime worked if the employee is "on

- 606 call" and procedures for recording that overtime that comply with FLSA
607 requirements;
- 608 (iv) establishing requirements governing overtime worked while an employee is
609 being trained and procedures for recording that overtime that comply with FLSA
610 requirements;
- 611 (v) subject to the FLSA, establishing the maximum number of hours that a
612 nonexempt employee may accrue before a department is required to pay the
613 employee for the overtime worked;
- 614 (vi) subject to the FLSA, establishing the maximum number of overtime hours for an
615 exempt employee that do not lapse; and
- 616 (vii) establishing procedures for adjudicating appeals of any FLSA determinations
617 made by the division as required by this section;
- 618 (d) monitor departments for compliance with the FLSA; and
- 619 (e) recommend to the Legislature and the governor any statutory changes necessary
620 because of federal government action.
- 621 (6) (a) In coordination with the procedures for recording overtime worked established in
622 rule by the division, the Division of Finance shall modify its payroll and human
623 resource systems to accommodate those procedures.
- 624 (b) Notwithstanding the procedures and requirements of Title 63G, Chapter 4,
625 Administrative Procedures Act, Section 63A-17-602, and Section 67-19a-301, any
626 employee who is aggrieved by the FLSA designation made by the division as
627 required by this section may appeal that determination to the director of the division
628 by following the procedures and requirements established in division rule.
- 629 (c) Upon receipt of an appeal under this section, the director shall notify the executive
630 director of the employee's department that the appeal has been filed.
- 631 (d) If the employee is aggrieved by the decision of the director, the employee shall
632 appeal that determination to the Department of Labor, Wage and Hour Division,
633 according to the procedures and requirements of federal law.

634 Section 9. **Effective date.**

635 This bill takes effect on May 1, 2024.