

DIVISION OF HUMAN RESOURCE MANAGEMENT

AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: Heidi Balderree

LONG TITLE

Committee Note:

The Government Operations Interim Committee recommended this bill.

Legislative Vote: 12 voting for 0 voting against 4 absent

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



28 service position;

29 ▶ clarifies the process for an agency's demotion or dismissal of a career service

30 employee;

31 ▶ clarifies language regarding compensation for overtime and an employee's regular

32 hourly wage; and

33 ▶ makes technical and conforming changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **63A-17-102**, as last amended by Laws of Utah 2022, Chapter 209

41 **63A-17-105**, as renumbered and amended by Laws of Utah 2021, Chapter 344

42 **63A-17-106**, as last amended by Laws of Utah 2022, Chapters 166, 169, 177, and 209

43 **63A-17-112**, as enacted by Laws of Utah 2022, Chapter 209

44 **63A-17-301**, as last amended by Laws of Utah 2022, Chapter 209

45 **63A-17-304**, as last amended by Laws of Utah 2022, Chapter 169

46 **63A-17-306**, as last amended by Laws of Utah 2022, Chapter 169

47 **63A-17-502**, as last amended by Laws of Utah 2022, Chapter 447



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

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

51 **63A-17-102. Definitions.**

52 As used in this chapter:

53 (1) "Agency" means any department or unit of Utah state government with authority to
54 employ personnel.

55 (2) "Career service" means positions under schedule B as defined in Section
56 **63A-17-301**.

57 (3) "Career service employee" means an employee who has successfully completed a
58 probationary period of service in a position covered by the career service.

59 (4) "Career service status" means status granted to employees who successfully
60 complete probationary periods for competitive career service positions.

61 (5) "Classified service" means those positions subject to the classification and
62 compensation provisions of Section 63A-17-307.

63 (6) "Controlled substance" means controlled substance as defined in Section 58-37-2.

64 (7) (a) "Demotion" means a disciplinary action resulting in a reduction of an
65 employee's current actual wage.

66 (b) "Demotion" does not mean:

67 (i) a nondisciplinary movement of an employee to another position without a reduction
68 in the current actual wage; or

69 (ii) a reclassification of an employee's position under the provisions of Subsection
70 63A-17-307(3) and rules made by the department.

71 (8) "Director" means the director of the division.

72 (9) "Disability" means a physical or mental disability as defined and protected under
73 the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.

74 (10) "Division" means the Division of Human Resource Management, created in
75 Section 63A-17-105.

76 (11) "Employee" means any individual in a paid status covered by the career service or
77 classified service provisions of this chapter.

78 (12) "Examining instruments" means written or other types of proficiency tests.

79 (13) "Human resource function" means those duties and responsibilities specified:

80 (a) under Section 63A-17-106;

81 (b) under rules of the division; and

82 (c) under other state or federal statute.

83 (14) "Market comparability adjustment" means a salary range adjustment determined
84 necessary through a market survey of salary data and other relevant information.

85 (15) "Probationary employee" means an employee serving a probationary period in a
86 career service position but who does not have career service status.

87 (16) "Probationary period" means that period of time determined by the division that an
88 employee serves in a career service position as part of the hiring process before career service
89 status is granted to the employee.

90 (17) "Probationary status" means the status of an employee between the employee's
91 hiring and the granting of career service status.

92 (18) "Structure adjustment" means a division modification of salary ranges.

93 (19) "Temporary employee" means a career service exempt ~~[employees]~~ employee
94 described in Subsection 63A-17-301(1)(r).

95 (20) "Total compensation" means salaries and wages, bonuses, paid leave, group
96 insurance plans, retirement, and all other benefits offered to state employees as inducements to
97 work for the state.

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

99 **63A-17-105. Division of Human Resource Management created -- Director --**
100 **Chief Human Resources Officer -- Staff.**

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

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

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

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

107 (b) be accountable to the executive director for the director's performance in office[-];

108 (c) serve as the chief human resource officer for the state executive branch; and

109 ~~[(3)]~~ (d) ~~[The director shall]~~ advise the governor on human resource matters and
110 policies.

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

112 **63A-17-106. Responsibilities of the director.**

113 (1) As used in this section, "miscarriage" means the spontaneous or accidental loss of a
114 fetus, regardless of gestational age or the duration of the pregnancy.

115 (2) The director shall have full responsibility and accountability for the administration
116 of the statewide human resource management system.

117 (3) Except as provided in Section 63A-17-201, an agency may not perform human
118 resource functions without the consent of the director.

119 (4) Statewide human resource management rules made by the division in accordance
120 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall take precedence if there

121 is a conflict with agency rules, policies, or practices.

122 (5) The division may operate as an internal service fund agency in accordance with
123 Section 63J-1-410 for the human resource functions the division provides.

124 (6) The director shall:

125 (a) develop, implement, and administer a statewide program of human resource
126 management that will:

127 (i) aid in the efficient execution of public policy;

128 (ii) foster careers in public service for qualified employees; and

129 (iii) render assistance to state agencies in performing their missions;

130 (b) design and administer the state pay plan;

131 (c) design and administer the state classification system and procedures for determining
132 schedule assignments;

133 (d) design and administer the state recruitment and selection system;

134 (e) administer agency human resource practices and ensure compliance with federal
135 law, state law, and state human resource rules, including equal employment opportunity;

136 (f) consult with agencies on decisions concerning employee corrective action and
137 discipline;

138 (g) maintain central personnel records;

139 (h) perform those functions necessary to implement this chapter unless otherwise
140 assigned or prohibited;

141 (i) perform duties assigned by the governor, executive director, or statute;

142 (j) make rules for human resource management, in accordance with Title 63G, Chapter
143 3, Utah Administrative Rulemaking Act;

144 (k) establish and maintain a management information system that will furnish the
145 governor, the Legislature, and agencies with current information on authorized positions,
146 payroll, and related matters concerning state human resources;

147 (l) conduct research and planning activities to:

148 (i) determine and prepare for future state human resource needs;

149 (ii) develop methods for improving public human resource management; and

150 (iii) propose needed policy changes to the governor;

151 (m) study the character, causes, and extent of discrimination in state employment and

152 develop plans for its elimination through programs consistent with federal and state laws
153 governing equal employment opportunity in employment;

154 ~~[(n) when requested by charter schools or counties, municipalities, and other political~~
155 ~~subdivisions of the state, provide technical service, training recommendations, or advice on~~
156 ~~human resource management at a charge determined by the director;]~~

157 ~~[(o)]~~ (n) establish compensation policies and procedures for early voluntary retirement;

158 ~~[(p)]~~ (o) confer with the heads of other agencies about human resource policies and
159 procedures;

160 ~~[(q)]~~ (p) submit an annual report to the executive director, the governor, and the
161 Legislature; and

162 ~~[(r)]~~ (q) assist with the development of a vacant position report required under
163 Subsection 63J-1-201(2)(b)(vi).

164 (7) (a) After consultation with the executive director, the governor, and the heads of
165 other agencies, the director shall establish and coordinate statewide training programs,
166 including training described in Subsection (7)(e).

167 (b) The programs developed under this Subsection (7) shall have application to more
168 than one agency.

169 (c) The division may not establish training programs that train employees to perform
170 highly specialized or technical jobs and tasks.

171 (d) The division shall ensure that any training program described in this Subsection (7)
172 complies with Title 63G, Chapter 22, State Training and Certification Requirements.

173 (e) (i) As used in this Subsection (7)(e):

174 (A) "Employee" means the same as that term is defined in Section 63A-17-112.

175 (B) "Supervisor" means an individual in a position at an agency, as defined in Section
176 63A-17-112, that requires the regular supervision and performance evaluation of an employee.

177 (ii) A supervisor shall attend the training:

178 (A) within six months of being promoted or hired to the position of supervisor; and

179 (B) at least annually.

180 (iii) ~~[Training attendance and the]~~ A supervisor's completion of training and effective
181 use of training information and principles shall be considered in an evaluation of ~~[a]~~ the
182 supervisor's job performance.

- 183 (iv) The training shall include:
184 (A) effective employee management and evaluation methods based on the pay for
185 performance management system described in Section 63A-17-112;
186 (B) instruction to improve supervisor and employee communications;
187 (C) best practices for recognizing and retaining high-performing employees;
188 (D) best practices for addressing poor-performing employees; and
189 (E) any other information and principles identified by the division to improve
190 management or organizational effectiveness.

191 (8) (a) (i) The division may collect fees for training as authorized by this Subsection
192 (8).

193 (ii) Training funded from General Fund appropriations shall be treated as a separate
194 program within the department budget.

195 (iii) All money received from fees under this section will be accounted for by the
196 department as a separate user driven training program.

197 (iv) The user training program includes the costs of developing, procuring, and
198 presenting training and development programs, and other associated costs for these programs.

199 (b) (i) Funds remaining at the end of the fiscal year in the user training program are
200 nonlapsing.

201 (ii) Each year, as part of the appropriations process, the Legislature shall review the
202 amount of nonlapsing funds remaining at the end of the fiscal year and may, by statute, require
203 the department to lapse a portion of the funds.

204 (9) Rules described in Subsection (6)(j) shall provide for at least three work days of
205 paid bereavement leave for an employee:

206 (a) following the end of the employee's pregnancy by way of miscarriage or stillbirth;

207 or

208 (b) following the end of another individual's pregnancy by way of a miscarriage or
209 stillbirth, if:

210 (i) the employee is the individual's spouse or partner;

211 (ii) (A) the employee is the individual's former spouse or partner; and

212 (B) the employee would have been a biological parent of a child born as a result of the
213 pregnancy;

214 (iii) the employee provides documentation to show that the individual intended for the
215 employee to be an adoptive parent, as that term is defined in Section 78B-6-103, of a child born
216 as a result of the pregnancy; or

217 (iv) under a valid gestational agreement in accordance with Title 78B, Chapter 15, Part
218 8, Gestational Agreement, the employee would have been a parent of a child born as a result of
219 the pregnancy.

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

221 **63A-17-112. Pay for performance management system -- Employees paid for**
222 **performance.**

223 (1) As used in this section:

224 (a) (i) "Agency" means, except as provided in Subsection (1)(a)(ii), the same as that
225 term is defined in Section 63A-17-102.

226 (ii) "Agency" does not include the State Board of Education, the Office of the State
227 Treasurer, Office of the State Auditor, Office of the State Attorney General, Utah System of
228 Higher Education, the Legislature, the judiciary, or, as defined in Section 63E-1-102, an
229 independent entity.

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

231 (ii) "Employee" does not include ~~[an individual in a schedule AB, as described in~~
232 ~~Section 63A-17-301, position.];~~

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

234 (B) an individual in a position that is not eligible to receive a retirement benefit under
235 Title 49, Utah State Retirement and Insurance Benefit Act; or

236 (C) an individual that an agency hires for a time-limited position that will last fewer
237 than 12 consecutive months.

238 (c) "Pay for performance" means a plan for incentivizing an employee ~~[for meeting or~~
239 ~~exceeding] to meet or exceed~~ production or performance goals, in which the plan is
240 well-defined before work begins, ~~[eligible work groups are defined,]~~ specific goals and targets
241 for the employee are determined, and measurement procedures are in place~~[-and specific~~
242 ~~incentives are provided when goals and targets are met].~~

243 (d) "Pay for performance management system" means the system described in
244 Subsection (2).

245 (2) The division shall establish and, in accordance with Title 63G, Chapter 3, Utah
246 Administrative Rulemaking Act, make rules for the administration of a pay for performance
247 management system.

248 (3) The pay for performance management system shall include:

249 (a) guidelines and criteria for an agency to adopt pay for performance policies and
250 administer pay based on an employee's performance in furtherance of the agency's mission;

251 (b) employee performance ratings;

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

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

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

256 (4) In consultation with the division, no later than July 1, 2023, each agency shall:

257 (a) adopt pay for performance policies based on the performance management system;

258 and

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

260 (i) subject to Subsection (5), for a classified service employee, the salary range of the
261 position classified plan for the employee's position; and

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

263 (A) commensurate to an employee's performance as reflected by the employee's
264 evaluation conducted in accordance with the pay for performance management system; and

265 (B) in an amount that is in accordance with the guidelines and criteria established for a
266 wage change in the pay for performance management system.

267 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
268 division shall make rules authorizing a classified service employee to receive a wage that
269 exceeds the salary range of the classified service employee's position classified plan if
270 warranted based on the classified employee's performance rating.

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

272 **63A-17-301. Career service -- Exempt positions -- Schedules for civil service**
273 **positions -- Coverage of career service provisions.**

274 (1) Except as provided in Subsection (3)(d), the following positions are exempt from
275 the career service provisions of this chapter and are designated under the following schedules:

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

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

338 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).
339 (ii) Removal from any appointive position under schedule A, unless otherwise
340 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.
341 (b) Schedule B is the competitive career service schedule, consisting of:
342 (i) all positions filled through competitive selection procedures as defined by the
343 director; or
344 (ii) positions filled through a division approved on-the-job examination intended to
345 appoint a qualified person with a disability, or a veteran in accordance with Title 71A, Chapter
346 2, Veterans Preference.
347 (3) (a) The director, after consultation with the heads of concerned executive branch
348 departments and agencies and with the approval of the governor, shall allocate positions to the
349 appropriate schedules under this section.
350 (b) Agency heads shall make requests and obtain approval from the director before
351 changing the schedule assignment and tenure rights of any position.
352 (c) Unless the director's decision is reversed by the governor, when the director denies
353 an agency's request, the director's decision is final.
354 (d) (i) An agency may file [~~with the division a request~~] a request with the division:
355 (A) to keep a position scheduled as a schedule B position as a schedule B position; or
356 (B) to reschedule a position that [~~would otherwise be~~] is scheduled as a schedule A
357 position as a schedule B position.
358 (ii) The division shall review a request filed under Subsection (3)(d)(i) and approve the
359 request only if the exception is necessary to conform to a requirement imposed as a condition
360 precedent to receipt of federal funds or grant of a tax benefit under federal law.
361 (4) (a) Compensation for employees of the Legislature shall be established by the
362 directors of the legislative offices in accordance with Section 36-12-7.
363 (b) Compensation for employees of the judiciary shall be established by the state court
364 administrator in accordance with Section 78A-2-107.
365 (c) Compensation for officers, faculty, and other employees of state universities and
366 institutions of higher education shall be established as provided in Title 53B, Chapter 1,
367 Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of
368 Higher Education.

369 (d) Unless otherwise provided by law, compensation for all other schedule A
370 employees shall be established by their appointing authorities, within ranges approved by, and
371 after consultation with the director.

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

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

375 (b) does not elect to convert to career service exempt status in accordance with a rule
376 made by the division.

377 (6) (a) An employee who is hired for a schedule AX position on or after July 1, 2022,
378 is exempt from career service status.

379 (b) An employee who before July 1, 2022, is a career service employee employed in a
380 schedule B position that is rescheduled to a schedule AX position on July 1, 2022, shall
381 maintain the employee's career service status for the duration of the employee's employment in
382 the same position unless the employee voluntarily converts to career service exempt status
383 before July 1, 2023.

384 (c) (i) Subject to Subsection (6)(c)(ii), an employee is exempt from career service
385 status if:

386 (A) before July 1, 2022, the employee was a probationary employee in a schedule B
387 position and had not completed the probationary period; and

388 (B) on July 1, 2022, the schedule B position in which the probationary employee is
389 employed is rescheduled as a scheduled AX position.

390 (ii) An employee described in Subsection (6)(c)(i):

391 (A) is not a probationary employee on or after July 1, 2022; and

392 (B) is exempt from career service status on and after July 1, 2022, unless the employee
393 changes employment to a schedule B position.

394 (d) The division shall disseminate to each employee described in Subsection (6)(b)
395 information on financial and other incentives for voluntary conversion to career-service exempt
396 status.

397 (e) An agency, as defined in Section [63A-17-112](#), may adopt a policy, created in
398 consultation with the division, for agency review of recommendations that schedule AX
399 employees be suspended, demoted, or dismissed from employment.

400 Section 6. Section **63A-17-304** is amended to read:

401 **63A-17-304. Promotion -- Reclassification -- Market adjustment.**

402 (1) (a) If an employee is promoted or the employee's position is reclassified to a higher
403 salary range maximum, the agency shall place the [~~employee~~] employee's salary within the new
404 range of the position.

405 (b) An agency may not set an employee's salary:

406 (i) higher than the maximum in the new salary range; or

407 (ii) lower than the minimum in the new salary range of the position.

408 (2) An agency shall adjust the salary range for an employee whose salary range is
409 approved by the Legislature for a market comparability adjustment consistent with Subsection
410 **63A-17-307(5)(b)(i)**:

411 (a) at the beginning of the next fiscal year; and

412 (b) consistent with appropriations made by the Legislature.

413 (3) Division-initiated revisions in the state classification system that result in
414 consolidation or reduction of class titles or broadening of pay ranges:

415 (a) may not be regarded as a reclassification of the position or promotion of the
416 employee; and

417 (b) are exempt from the provisions of Subsection (1).

418 Section 7. Section **63A-17-306** is amended to read:

419 **63A-17-306. Dismissals and demotions -- Grounds -- Disciplinary action --**

420 **Procedure -- Reductions in force.**

421 (1) A career service employee may be dismissed or demoted:

422 (a) to advance the good of the public service; or

423 (b) for just [~~causes~~] cause, including inefficiency, incompetency, failure to maintain
424 skills or adequate performance levels, insubordination, disloyalty to the orders of a superior,
425 misfeasance, malfeasance, or nonfeasance in office.

426 (2) An employee may not be dismissed because of race, sex, age, disability, national
427 origin, religion, political affiliation, or other nonmerit factor including the exercise of rights
428 under this chapter.

429 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
430 director shall make rules governing the procedural and documentary requirements of

431 disciplinary dismissals and demotions.

432 (4) If an agency head finds that a career service employee is charged with aggravated
433 misconduct or that retention of a career service employee would endanger the peace and safety
434 of others or pose a grave threat to the public interest, the employee may be suspended pending
435 the administrative appeal to the department head as provided in Subsection (5).

436 (5) ~~[(a) A] An agency head may not demote or dismiss a career service employee [may~~
437 ~~not be demoted or dismissed unless the department head or designated representative has~~
438 ~~complied with this subsection.] unless:~~

439 ~~[(b)] (a) [The department] the agency head or the designated representative of the~~
440 ~~agency head~~ notifies the employee in writing of the ~~[reasons] reason~~ for the dismissal or
441 demotion[-];

442 ~~[(c)] (b) [The] the employee [has no less than] is given~~ five working days to submit a
443 written reply to the agency head and to have the reply considered by the [department] agency
444 head[-];

445 ~~[(d)] (c) [The] the employee [has an] is given an~~ opportunity to be heard by the
446 ~~[department] agency head or the designated representative[-] of the agency head; and~~

447 ~~[(e)] (d) [Following the hearing, the employee may be dismissed or demoted if the~~
448 ~~department] after completing the procedural requirements described in Subsections (5)(a)~~
449 through (c), the agency head finds adequate cause or reason[-] to demote or dismiss the
450 employee.

451 (6) (a) Reductions in force required by inadequate funds, change of workload, or lack
452 of work are governed by retention points established by the director.

453 (b) Under those circumstances:

454 (i) The agency head shall designate the category of work to be eliminated, subject to
455 review by the director.

456 (ii) Temporary and probationary employees shall be separated before any career service
457 employee.

458 (iii) (A) When more than one career service employee is affected, the employees shall
459 be separated in the order of their retention points, the employee with the lowest points to be
460 discharged first.

461 (B) Retention points for each career service employee shall be computed according to

462 rules established by the director, allowing appropriate consideration for proficiency and
463 seniority in state government, including any active duty military service fulfilled subsequent to
464 original state appointment.

465 (c) (i) A career service employee who is separated in a reduction in force under this
466 section shall be given preferential consideration when applying for a career service position.

467 (ii) Preferential consideration under Subsection (6)(c)(i) applies only until the former
468 career service employee accepts a career service position.

469 (iii) The director shall make rules in accordance with Title 63G, Chapter 3, Utah
470 Administrative Rulemaking Act, concerning the manner of granting preferential consideration
471 under Subsection (6)(c)(i).

472 (d) (i) An employee separated due to a reduction in force may appeal to the department
473 head for an administrative review.

474 (ii) The notice of appeal must be submitted within 20 working days after the
475 employee's receipt of written notification of separation.

476 (iii) The employee may appeal the decision of the department head according to the
477 grievance and appeals procedure of this chapter and Title 67, Chapter 19a, Grievance
478 Procedures.

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

480 **63A-17-502. Overtime policies for state employees.**

481 (1) As used in this section:

482 (a) "Accrued overtime hours" means:

483 (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end
484 of the fiscal year, have not been paid and have not been taken as time off by the nonexempt
485 state employee who accrued them; and

486 (ii) for exempt employees, overtime hours earned during an overtime year.

487 (b) "Appointed official" means:

488 (i) each department executive director and deputy director, each division director, and
489 each member of a board or commission; and

490 (ii) any other person employed by a department who is appointed by, or whose
491 appointment is required by law to be approved by, the governor and who:

492 (A) is paid a salary by the state; and

493 (B) who exercises managerial, policy-making, or advisory responsibility.

494 (c) "Department" means the Department of Government Operations, the Department of
495 Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage
496 Services, the Insurance Department, the Public Service Commission, the Labor Commission,
497 the Department of Agriculture and Food, the Department of Human Services, the Department
498 of Natural Resources, the Department of Transportation, the Department of Commerce, the
499 Department of Workforce Services, the State Tax Commission, the Department of Cultural and
500 Community Engagement, the Department of Health, the National Guard, the Department of
501 Environmental Quality, the Department of Public Safety, the Commission on Criminal and
502 Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General,
503 merit employees in the Office of the State Treasurer, merit employees in the Office of the State
504 Auditor, Department of Veterans and Military Affairs, and the Board of Pardons and Parole.

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

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

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

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

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

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

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

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

520 (i) an appointed official;

521 (ii) an elected official; or

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

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

526 (m) "Work period" means:

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

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

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

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

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

537 (b) In the FLSA agreement, the nonexempt employee shall elect either to be
538 compensated for overtime by:

539 (i) taking time off work at the rate of one and one-half hour off for each overtime hour
540 worked; or

541 (ii) being paid for the overtime worked at the rate of one and one-half times [~~the rate~~
542 ~~per hour that the state employee receives for nonovertime work~~] the employee's regular hourly
543 wage.

544 (c) Any nonexempt employee who elects to take time off under this Subsection (3)
545 shall be paid for any overtime worked in excess of the cap established by the division.

546 (d) Before working any overtime, each nonexempt employee shall obtain authorization
547 to work overtime from the employee's immediate supervisor.

548 (e) Each department shall:

549 (i) for employees who elect to be compensated with time off for overtime, allow
550 overtime earned during a fiscal year to be accumulated; and

551 (ii) for employees who elect to be paid for overtime worked, pay them for overtime
552 worked in the paycheck for the pay period in which the employee worked the overtime.

553 (f) If a department pays a nonexempt employee for overtime, that department shall
554 charge that payment to that department's budget.

555 (g) At the end of each fiscal year, the Division of Finance shall total all the accrued
556 overtime hours for nonexempt employees and charge that total against the appropriate fund or
557 subfund.

558 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each department shall
559 compensate exempt employees who work overtime by granting them time off at the rate of one
560 hour off for each hour of overtime worked.

561 (ii) The director of the division may grant limited exceptions to ~~[this requirement]~~ the
562 compensation requirement described in Subsection (4)(a)(i), where work circumstances dictate,
563 by authorizing a department to pay ~~[employees]~~ an exempt employee for overtime worked at
564 the ~~[rate per hour that the employee receives for nonovertime work,]~~ employee's regular hourly
565 wage if that department has funds available.

566 (b) (i) Each department shall:

567 (A) establish in its written human resource policies a uniform annual date for each
568 division that is at the end of any pay period; and

569 (B) communicate the uniform annual date to its employees.

570 (ii) If any department fails to establish a uniform annual date as required by this
571 Subsection (4), the director of the division, in conjunction with the director of the Division of
572 Finance, shall establish the date for that department.

573 (c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a
574 benefit, and is not a vested right.

575 (ii) A court may not construe the overtime for exempt employees authorized by this
576 Subsection (4) as an entitlement, a benefit, or as a vested right.

577 (d) At the end of the overtime year, upon transfer to another department at any time,
578 and upon termination, retirement, or other situations where the employee will not return to
579 work before the end of the overtime year:

580 (i) any of an exempt employee's overtime that is more than the maximum established
581 by division rule lapses; and

582 (ii) unless authorized by the director of the division under Subsection (4)(a)(ii), a
583 department may not compensate the exempt employee for that lapsed overtime by paying the
584 employee for the overtime or by granting the employee time off for the lapsed overtime.

585 (e) Before working any overtime, each exempt employee shall obtain authorization to

586 work overtime from the exempt employee's immediate supervisor.

587 (f) If a department pays an exempt employee for overtime under authorization from the
588 director of the division, that department shall charge that payment to that department's budget
589 in the pay period earned.

590 (5) The division shall:

591 (a) ensure that the provisions of the FLSA and this section are implemented throughout
592 state government;

593 (b) determine, for each state employee, whether that employee is exempt, nonexempt,
594 law enforcement, or has some other status under the FLSA;

595 (c) in coordination with modifications to the systems operated by the Division of
596 Finance, make rules:

597 (i) establishing procedures for recording overtime worked that comply with FLSA
598 requirements;

599 (ii) establishing requirements governing overtime worked while traveling and
600 procedures for recording that overtime that comply with FLSA requirements;

601 (iii) establishing requirements governing overtime worked if the employee is "on call"
602 and procedures for recording that overtime that comply with FLSA requirements;

603 (iv) establishing requirements governing overtime worked while an employee is being
604 trained and procedures for recording that overtime that comply with FLSA requirements;

605 (v) subject to the FLSA, establishing the maximum number of hours that a nonexempt
606 employee may accrue before a department is required to pay the employee for the overtime
607 worked;

608 (vi) subject to the FLSA, establishing the maximum number of overtime hours for an
609 exempt employee that do not lapse; and

610 (vii) establishing procedures for adjudicating appeals of any FLSA determinations
611 made by the division as required by this section;

612 (d) monitor departments for compliance with the FLSA; and

613 (e) recommend to the Legislature and the governor any statutory changes necessary
614 because of federal government action.

615 (6) (a) In coordination with the procedures for recording overtime worked established
616 in rule by the division, the Division of Finance shall modify its payroll and human resource

617 systems to accommodate those procedures.

618 (b) Notwithstanding the procedures and requirements of Title 63G, Chapter 4,
619 Administrative Procedures Act, Section 63A-17-602, and Section 67-19a-301, any employee
620 who is aggrieved by the FLSA designation made by the division as required by this section may
621 appeal that determination to the director of the division by following the procedures and
622 requirements established in division rule.

623 (c) Upon receipt of an appeal under this section, the director shall notify the executive
624 director of the employee's department that the appeal has been filed.

625 (d) If the employee is aggrieved by the decision of the director, the employee shall
626 appeal that determination to the Department of Labor, Wage and Hour Division, according to
627 the procedures and requirements of federal law.

628 Section 9. **Effective date.**

629 This bill takes effect on May 1, 2024.